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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: SRC 02 189 51265 Office: Texas Service Center

Date: DEC 10 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Texas Service Center, and certified to the Associate Commissioner for Examinations for review. The decision of the director will be withdrawn and the matter remanded to her for further action and consideration.

The petitioner engages in the sales and installation of landscapes for residences. It desires to employ the beneficiaries as landscape laborers for nine months. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that sufficient countervailing evidence had been provided to overcome the concerns addressed in the Department of Labor's decision. The director also determined that the petitioner had established that the need for the beneficiaries' services is temporary. However, the petition may not be approved for another reason beyond the decision of the director.

The regulation at 8 C.F.R. 214.2(h)(2)(iii) states in pertinent part that:

Named beneficiaries. Nonagricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H-2B classification, exceptions may be granted in emergent situations involving multiple beneficiaries at the discretion of the director, and in special filing situations as determined by the Service's Headquarters.

The regulations do not provide for the acceptance of nonagricultural petitions that do not include the names of the beneficiaries and other required information at the time of filing. Further, the petitioner has not presented an emergent situation that would allow the Service to waive the names of the temporary nonagricultural workers at the time of filing. For this additional reason, the petition may not be approved.

Since the aforementioned issue was not discussed in the director's decision, the case will be remanded so that the director may address this matter. The petitioner should be given an opportunity to submit any additional evidence that the director deems necessary. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of August 6, 2002 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.