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U.S. Department of Justice
Immigration and Naturalization Service

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



14 JUN 2002

File: SRC 01 232 51671 Office: Texas Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Public Copy

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 denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a framing firm which seeks to employ the beneficiaries as construction workers for a period of six months. The petition was accompanied by a temporary labor certification from the Department of Labor. The director denied the petition because the beneficiaries were not named.

On appeal, the petitioner's representative argues that the petitioner "was in an emergent situation in that the delays of processing this petition caused the employer to lose contact with his desired recruits." The petitioner has now provided a list of potential recruits that the petitioner hopes to hire.

8 C.F.R. 214.2(h)(2)(iii) states in part:

Nonagricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H2B 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

In this instance, the temporary labor certification process took four months which may be considered lengthy. As a result, the petitioner's claim of an emergent situation can be accepted. In addition, the petitioner has now submitted a list of potential workers. In view of the foregoing, it is concluded that the petitioner complied with applicable regulations and that the petition may be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner has sustained that burden. Accordingly, the decision of the director will be withdrawn and the petition will be approved.

ORDER: The director's decision is withdrawn and the petition is approved.