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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 01 191 50206 Office: Texas Service Center Date:

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)

Public Copy

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

The petitioner is a foundation repair firm which seeks to employ the beneficiaries as construction workers for a period of ten 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. The director also found that the petitioner had not demonstrated that the positions are temporary.

On appeal, the petitioner's representative argues that the positions are seasonal. However, the petitioner's representative has not specifically explained why the petitioner did not initially provide a list of named beneficiaries.

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 petitioner has provided no evidence of an emergent situation which precluded it from providing a list of named beneficiaries.

In addition, 8 C.F.R. 214.2(h)(6)(ii)(B)(2) describes a seasonal need as follows:

The petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

The petitioner asserts that its need is seasonal. However, the time requested is spread over all four seasons of the year. In addition, the petitioner contends that the beneficiaries will work outdoors and cannot work unless the soil is dry. The petitioner has not shown that the rainfall during the period in which the beneficiaries will work is significantly different from that of the

the rest of the year. In view of the foregoing, it is concluded that the petition may not 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.