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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



File: SRC 01 260 54281 Office: Texas Service Center

Date: 15 OCT 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 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:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 engages in resort management and administration. It desires to employ the beneficiaries as petit club child care coordinators for six months. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could be made. The director determined that the petitioner failed to meet the regulatory requirements by not including the names of the beneficiaries at the time of filing the petition and an exception could not be granted.

On appeal, counsel states that this appeal seeks review based on an incorrect application of law and Service policy.

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.

Counsel states that the petitioner fully explained the emergent need to seek visas for unnamed beneficiaries as the start of high travel season on November 1, the fact that child care coordinators are a critical component of the success of the business, and the utter scarcity of qualified workers to fill the positions.

The petition was filed on September 4, 2001. The Service sent a fax request to the petitioner for additional evidence on September 11, 2001, and after receiving no response, mailed the same request for additional evidence on September 22, 2001. The Service requested that the petitioner submit a list of names, dates of birth, and countries of birth for the beneficiaries. The Service allowed the petitioner 12 weeks to respond to their request.

The petitioner's response dated September 20, 2001 stated in pertinent part:

██████████ has been unable to find qualified, available U.S. workers to fill these positions during this seasonal need...While some workers have shown interest in the position openings in Florida, their availability has not been confirmed.

██████████ has recruited extensively... prior to and during the filing of this pending H-2B petition with no responses in the United States. In addition to the recruitment... we also held numerous job fairs in the U.S. without success. We have identified six foreign nationals who are qualified for the jobs and have accepted employment subject to the issuance of a visa.

The decision to allow unnamed beneficiaries on an H-2B petition should be based on evidence from the petitioner clearly describing the "emergent situation." In general, the decision to allow unnamed beneficiaries on an H-2B petition should be based on valid business reasons. The petitioner claims among others reasons previously stated that it is unable to find qualified, available U.S. workers. However, the petitioner has not presented any evidence establishing when it started its recruitment efforts to fill the temporary positions at the [REDACTED] in [REDACTED]. Absent such evidence, the Service is unable to determine whether the petitioner allowed itself sufficient time to recruit qualified workers. Therefore, the petitioner's inability to recruit potential workers is not a valid business reason as to why the beneficiaries are unnamed or classifiable as an "emergent situation".

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.