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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

PUBLIC COPY



APR 01 2003

File: SRC 01 276 50535 Office: Texas Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiaries: [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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner is a modular manufacturer of single family homes. It desires to employ the beneficiaries as carpenter helpers for one year. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could not be made. The director determined that the petitioner had not submitted evidence of the temporary nature of the job.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii), defines an H-2B temporary worker as:

an alien...having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), codified in current regulations at 8 C.F.R. § 214.2(h)(6)(ii), specified that the test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. See 55 Fed. Reg. 2616 (1990).

As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. § 214.2(h)(6)(ii)(B).

The petition indicates that the employment is peakload. The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(3) states that for the nature of the petitioner's need to be a peakload need, the petitioner must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Help construct, erect, install and repair structures and fixtures of wood, plywood, and wallboard, using carpenter's handtools and power tools. Shape materials to prescribed measurements using saws, chisels, and planes. Assemble cut and shaped materials and fastens them together with nails, dowel pins, or glue. Fit and install prefabricated window frames, doors, doorframes, weather stripping, interior and exterior trim and finish hardware.

In this case, the petitioner has not established that its need to supplement its permanent staff for one year is due to a short-term demand. In its letter dated August 23, 2001, the petitioner states that its need for temporary workers is due to the explosive growth in home building and shortage of subcontractors in the State of Georgia. The petitioner has not shown that the growth in home building and shortage of subcontractors is for a limited time period. The petitioner's need for carpenter helpers to perform construction and installation services, which is the nature of the petitioner's business, will always exist. The petitioner has not shown that its need for workers in these positions is not permanent. The petitioner has not demonstrated that the nature of its need for carpenter helpers is temporary in nature. Accordingly, the director's decision will not be disturbed.

This petition may not be approved for another reason. 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 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.

In this case, the petitioner has not submitted any evidence establishing an "emergent situation" that would allow the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau), to waive the names of the temporary nonagricultural workers at the time of filing.

Moreover, 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.

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 sustained that burden.

ORDER: The director's decision is affirmed. The petition is denied.