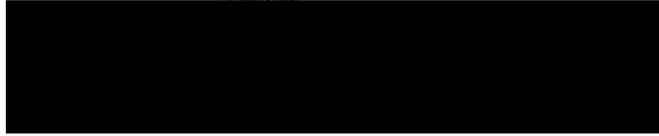


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



FILE: SRC 03 162 52338 OFFICE: TEXAS SERVICE CENTER DATE: DEC 09 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

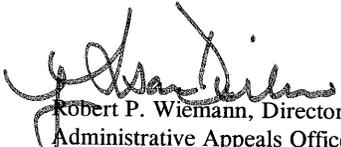
Identifying data deleted to  
prevent disclosure and  
invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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 Director, Texas Service Center, denied the nonimmigrant petition and then certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a construction company that desires to employ the beneficiaries as construction laborers in the areas of carpentry, masonry, plumbing, and electrical work from February 1, 2003 to November 30, 2003. The certifying officer of the Department of Labor (DOL) declined to issue a labor certification because the petitioner had not established a temporary need for the beneficiaries. The DOL officer also stated that the petitioner's advertising for the position appeared deficient. The director determined that the petitioner had not submitted sufficient countervailing evidence to overcome the objections of the Department of Labor.

The petitioner did not submit any additional materials to the record.

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), 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 . . . .

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. *Matter of Artee Corp.*, 18 I&N Dec. 366 (Comm. 1982).

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 petitioner indicates on the Form I-129 that the employment is a seasonal, periodic need. To establish that the nature of the petitioner's need is a seasonal need, 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. 8 C.F.R. § 214.2 (h)(6)(ii)(B)(2).

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

"Workers will perform any combination of the following duties: Examine PVC pipe for defects. [C]ut pipe into desired lengths, apply couplings and pipe together. May pull wire through conduits. May hang light, switch or panel boxes. May help set various windows and doors into place. May help prepare trowels and mortar for laying blocks or brick."

In the cover letter that accompanied the petition, the petitioner stated that it had a seasonal need for temporary employees and that the period from March to October is its busiest time of the year workwise. In addition, the petitioner stated that it had an increase in the number of jobs that it had under contract during this period of time. The petitioner also stated that its advertisement was not mislabeled since it had a specific need for plumbing, electrical, and masonry workers, as opposed to construction labor. The petitioner submitted no further documentary evidence with regard to its assertions.

Upon review of the record, the petitioner has not provided sufficient persuasive evidence to establish that its need for the additional construction workers is temporary. For example, the record contains no corroborative evidence as to the volume of the petitioner's construction business during the months of March through November and how this volume of business compares with the remainder of the year. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, it should be noted that the original petition states that the petitioner wishes to employ the beneficiaries from February 1 through November 30. As such, this is a ten-month period of time that suggests a year round need for extra construction help rather than a seasonal need. The petitioner has not established that the need for the services to be performed is a seasonal need and, therefore, temporary in nature. For these reasons, the director's decision will not be disturbed.

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

**ORDER:** The director's decision of June 30, 2003 is affirmed.  
The petition is denied.