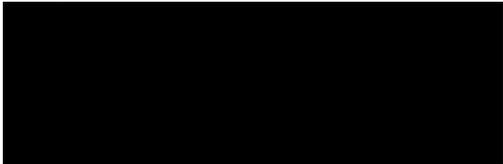


D4

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

Identifying data deleted to
prevent disclosure of unclassified
information that would constitute an
invasion of personal privacy

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



FILE: SRC 03 191 51300 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

PUBLIC COPY

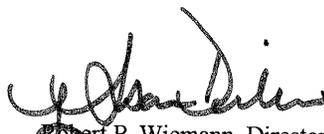
INSTRUCTIONS:

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 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 petition and 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 certified public accounting (CPA) firm that desires to employ the beneficiary as a client administrator from July 1, 2003 to May 31, 2004. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could not be made because the employer had not established a temporary need. The director determined that the petitioner had not submitted sufficient countervailing evidence to overcome the objections of the Department of Labor (DOL).

On notice of certification, the petitioner presents no additional evidence.

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 one-time occurrence. To establish that the nature of the petitioner's need is a one-time occurrence, the petitioner must demonstrate that she will not need workers to perform the services or labor in the future. 8 C.F.R. § 214.2(h)(6)(ii)(B)(1).

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads: "Book-keeping utilizing 'Peachtree' & 'QuickBooks' accounting systems, office

administration & filing, database administration, liaising with international clients (particularly those from the United Kingdom & Ireland), responding to client e-mails and faxes, collation of data for the preparation of non-resident tax returns, input and drafting of non-resident tax returns." The form also indicated that the worker had to be computer literate and familiar with the United Kingdom taxation system. A correction to the form noted that the worker needed a valid passport and identification, and that ten per cent travel to the United Kingdom and Ireland was also a duty of the position.

In a cover letter to Citizenship and Immigration Services (CIS), the petitioner explained that the majority of its clients actually reside in the United Kingdom and Ireland. To better serve existing clients and expand on its client base, the petitioner stated it wanted to hire the beneficiary so that it could conduct an intensive marketing campaign directed at Ireland and the United Kingdom via telephone, e-mail and overseas trips. The petitioner stated the beneficiary could make several trips during her period of employment and that the trips were the key focus of the position and of primary importance to the petitioner. The petitioner further stated that none of the existing partners or employees could be spared to devote time to the marketing project, and attempts to recruit a local hire had been unsuccessful.

On July 3, 2003, the director requested further evidence with regard to the beneficiary's qualifications, and countervailing evidence with regard to the Department of Labor's statements with regard to the non-certification of the Form ETA-750. On July 10, 2003, the petitioner submitted a letter from the beneficiary's former employer as to her work as a client administrator for two years in England. The petitioner also stated that the position had been available since December 2002, and it had not found a qualified U.S. worker for the position. The petitioner went over the process it undertook to meet the Department of Labor guidelines and instructions, and it submitted the copies of the job advertisements that it put into the *Orlando Sentinel*.

In this case, the petitioner has not sufficiently established that its needs are consistent with the test set forth in *Matter of Artee, supra*. The description of the position includes bookkeeping, liaising with overseas clients via email and fax, collating data, and inputting tax returns. Only ten percent of the position as described by the petitioner is linked to overseas trips to the United Kingdom or Ireland to develop new clientele. As such, the majority of the petitioner's need appears to be for a permanent in-house bookkeeper, rather than the temporary employment of a worker to direct a one-time overseas marketing campaign directed at specific countries. Without more persuasive evidence with regard to the marketing project, the petitioner has not established that the position is temporary and a one-time occurrence. The petitioner

has not overcome the objections of the DOL. 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 August 5, 2003 is affirmed.
The petition is denied.