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

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



FILE: SRC 03 140 51335

Office: Texas Service Center

Date:

DEC 23 2003

IN RE: Petitioner:
Beneficiaries:



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

ON BEHALF OF PETITIONER:



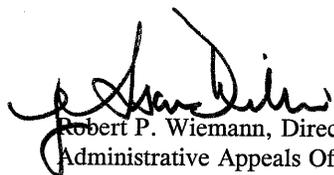
INSTRUCTIONS:

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, and certified to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner engages in the business of freight transportation and delivery service. It desires to employ the beneficiaries as tractor-trailer truck drivers for seven and one-half months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner had not established a temporary need. The director concurred with the findings of the Department of Labor.

On notice of certification, neither counsel nor the petitioner submitted additional evidence. Therefore, the record is considered complete.

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 petition indicates that the employment is seasonal.

To establish that the nature of the need is "seasonal," the petitioner must demonstrate 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 nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Drive long distance conventional tractor-trailer combination to transport a variety of products, including seasonal products. Secure, load, and unload products on the trailer; hook and unhook trailers from the tractor; maintain driver logs; and inspect truck for defects and safe operating conditions.

In its decision, the DOL determined that the petitioner had not provided sufficient documentation to establish that the job opportunity is temporary. Specifically, the DOL stated that the employer failed to define the products being shipped during the peakload months and that the tractor-trailer truck driver jobs are generally considered to be permanent.

The petitioner states that it has a shortage of truck drivers during the months of March through November when the shipping season is at its peak. In reviewing the letters written by the petitioner's clients, the petitioner will be providing domestic transportation for various companies such as Applicca, Alcoa, IC Corporation, Maxell, etc. The products that it hauls for these companies are household appliances, aluminum and aluminum products, school buses, and tapes, batteries and accessories. The record does not contain any evidence to substantiate the petitioner's claim that it hauls seasonal products.

Upon review, the petitioner has not established that its need to supplement its permanent staff of 600 employees on a temporary basis is due to a seasonal demand. The petitioner has not shown that its peak shipping season mainly consists of transporting goods that are tied to a fixed harvesting or growing season. The petitioner's need for drivers to transport commodities and goods across the United States, which is the nature of the petitioner's business, will always exist. If the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of immigrant visas. The petitioner has not demonstrated that the nature of its need for tractor-trailer truck drivers is a seasonal need and temporary.

ORDER: The decision of the director is affirmed. The petition is denied.