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

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, 20 Mass, 3/F  
Washington, D.C. 20536



File: EAC 03 021 52270 Office: Vermont Service Center

Date: **MAY 13 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

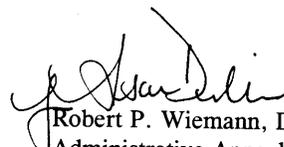
**INSTRUCTIONS:**

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a commercial health care laundry that provides linen service to 21 hospitals and nursing homes throughout New Hampshire, Vermont and Maine. It seeks to employ the beneficiaries as laundry cleaners for ten months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made. The director determined that the petitioner had not established a temporary need for the workers.

On appeal, the petitioner states that due to the low unemployment rate and the lack of affordable housing in the area, it has been unable to recruit enough local workers to fill the positions.

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 seasonal and that the temporary need recurs annually.

The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(2) states that for the nature of the petitioner's need to be seasonal, 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.

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

Wash, dry, press and fold linen.

In the DOL's denial of certification, it explains that the certification could not be issued because of insufficient justification to support the petitioner's application as a temporary need. The DOL's decision states that the petitioner's employment opportunity is represented as temporary and it can and should be offered to United States workers on a permanent basis. The DOL also states that the petitioner did not provide evidence to show that other recruitment efforts had been unsuccessful prior to entering into the labor certification process.

The petitioner has now presented countervailing evidence to show that its recruitment efforts were unsuccessful. The petitioner states that it received two responses to its advertisements and neither applicant followed through with his or her initial interest nor accepted an invitation to fill out a job application. The petitioner explains that its need for employees is a temporary need that is a result of the extremely low unemployment rate and lack of affordable housing in its labor market area.

Upon review, the petitioner has not established that the services to be performed by the beneficiaries are traditionally tied to a season of the year by an event or pattern. The petitioner operates a laundry and dry cleaning service, and therefore, has a permanent need for laborers in order for its business to continue to exist. Furthermore, if the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of immigrant visas. Consequently, the employment cannot be considered a seasonal need and for only a temporary period.

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.