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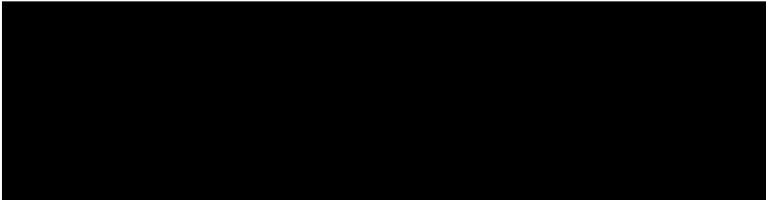
U.S. Department of Homeland Security

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 03 115 50938 Office: TEXAS SERVICE CENTER Date:

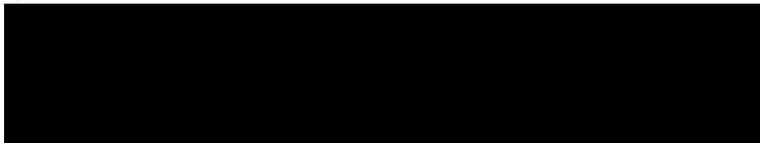
NOV 25 2003

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:



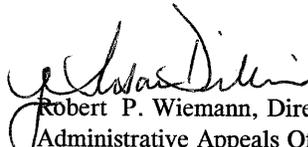
INSTRUCTIONS:

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 which 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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and then certified to the Administrative Appeals Office (AAO) for review. The director's decision will be overturned. The petition will be approved.

The petitioner is a Florida company that creates and rehabilitates water mains using trenchless technology. It seeks to employ the ten identified beneficiaries as pipe-layers from February 14, 2003 to February 13, 2004. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that the petitioner had not submitted any evidence establishing that there are no individuals who could perform the duties of the position in the United States. Furthermore, the director concurred with the Department of Labor with regard to whether the petitioner established that the need for the requested workforce was temporary.

On notice of certification, the petitioner submits copies of AAO decisions and resubmits materials sent to both the service center and to the Department of Labor with regard to the temporary nature of the petitioner's need for temporary employees.

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. . . .

Pursuant to 8 C.F.R. 214.2(h)(6)(ii), 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).

With regard to one-time occurrence, the petitioner must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the

services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker. 8 C.F.R. § 214.2 (h) (6) (ii) (B) (1).

Upon review of the record, the petitioner submitted a contract between itself and another Florida company working on the improvement of water distributions system in several national parks operated by the U.S. Department of the Interior. According to the petitioner, the technology it uses is revolutionary in that there is no digging of trenches to replace old water pipes, and the new water pipes are pre-chlorinated prior to placement in the ground. The contract indicated a specific time period for the fulfillment of the petitioner's contract.

With regard to the availability of U.S. workers, the petitioner states that it engaged in an advertising campaign monitored by the State of Florida's Agency for Workforce Innovation and it submits the job vacancy announcements for pipeline technicians published on January 26, 27, and 28, 2003 in two newspapers in Florida. The petitioner previously submitted affidavits with regard to the availability of pipe-layers certified in trenchless technology in the United States. One affidavit from Gordon Gruhn, an underground utilities contractor and company owner in Florida, stated that there were no workers in Florida who were qualified to perform the petitioner's pipe-replacement process as such a process was unheard of in the United States.

Upon review of the record, it appears that the petitioner has fulfilled criteria with regard to not displacing qualified unemployed U.S. workers in the region of proposed employment. It also appears that the proposed employment does not adversely affect the working conditions of U.S. workers who are similarly employed.

On the I129 petition, the petitioner explains that it needs the beneficiaries' services on a one-time occurrence basis, and adds the following statement: "[The] contract requires that Murphy Pipeline Contractors, Inc. provide its exclusive expertise, not known to exist anywhere in the United States, in the piping and re-piping of underground projects in and around the Lee County, Florida area using pre-chlorinated pipes." Since the contract is of limited duration, the petitioner has established that the need for the workforce is temporary.

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 met that burden.

ORDER: The director's March 25, 2003 decision is overturned. The petition is approved.