

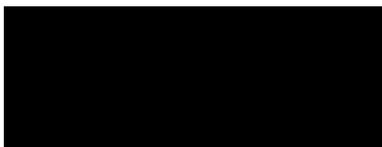
U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

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



OCT 30 2003

FILE: SRC 02 181 51774 Office: Texas Service Center Date:

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

Identifying data deleted to prevent disclosure of information that is exempt from release under FOIA

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.

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Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a private citizen who desires to employ the beneficiary as a live-in child monitor for eight months. 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, neither counsel nor the petitioner presents any additional evidence.

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 a one-time occurrence.

The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future.

The description of the job offer as advertised in the newspaper reads in pertinent part:

Observes and monitors play activities or amuses children by reading to or playing games w/them (two young children in home: ages two and one-half years and six months). Prepares and serves meals or formulas. Sterilizes bottles or other equipment used for feeding infants. Dresses or assist[s] children to dress and bathe. Accompanies children on walks or other outings. Washes and irons clothing. Keeps children's quarters clean and tidy. Cleans other parts of home. Lives in employer household Mon-Fri, due to children's parents' irregular work schedules.

In this case, the petitioner has not sufficiently established that its childcare needs are consistent with the test set forth in *Artee*. The petitioner contends that the position and the need are temporary, but in her letter dated April 18, 2002 she states, in pertinent part, "[N]either my husband, nor myself, gets home early enough to prepare dinner meals and many mornings miss breakfast time. We also have little time to attend to household chores. . . . The schools in our area do not take children before preschool age, approximately three-years old. Until such time, we need someone temporarily to play, feed, occasionally bathe the children and maintain our household . . . ."

Further, the description of the position in the newspaper ad includes living in the employer's household from Monday to Friday, caring for two children, as well as housekeeping duties, due to the parents' irregular work schedules. Housekeeping duties are ongoing and cannot be classified as duties that will not need to be performed in the future. The petitioner's need is not limited to the care of her children and does not have a credible, definite ending date. Therefore, it is not unreasonable to conclude that the petitioner's childcare needs, for the duties she listed, would not end in the near, definable future. See *Blumenfeld v. Attorney General*, 762 F.Supp. 24 (D. Conn. 1991). The petitioner has not overcome the objections of the DOL.

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 director's decision is affirmed. The petition is denied.