U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

DH

[redacted]

FILE: EAC 03 034 50273 Office: VERMONT SERVICE CENTER Date: AUG 0 4 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 private citizen who desires to employ the beneficiary as a childcare provider for two years. 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 established that the beneficiary qualifies for classification within the meaning of section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act).

On appeal, counsel states that it is clear from the evidence provided by the petitioner that the need for the beneficiary's services is a one-time, short-term occurrence.

Section 101(a)(15)(H)(ii)(b) of 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). Counsel states, in his response letter dated May 28, 2003, that the documentation is being submitted as evidence to establish that the need for the beneficiary's services is a one-time temporary occurrence.

To establish that the nature of the need is a "one-time occurrence," the petitioner must demonstrate 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*).

The petition was properly filed on November 12, 2002. The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

> Assist in daily care of children and home, perform light cooking, help children with homework, guide children through completion of chores, transport children to after school activities, caring for children some evenings, food shopping, laundry, general help around the house.

The description of the job offer as stated by the petitioner reads in pertinent part:

> [redacted]'s responsibilities incorporate assisting me in the daily care of my two children and my home. She performs light cooking for my children, helps them with their homework, guides them through their chores, transports them to their after-school activities and cares for them some evenings. Domestically, her responsibilities include food shopping, laundry, and general help around the house.

In this case, the petitioner has not sufficiently established that its childcare needs are consistent with the test set forth in *Artee*. The position description includes the beneficiary performing housekeeping duties.[1] 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 appeal is dismissed.

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[1] In a letter dated April 29, 2002, the petitioner stated that the beneficiary "is currently under my employ as a cook, academic tutor, and child care provider" and that the beneficiary's current domestic responsibilities include food shopping, laundry, and general support around the house. It should be noted that the petitioner indicated that the beneficiary is currently within the United States in B-2 nonimmigrant status as a temporary visitor for pleasure. As such, she is not among the classes of aliens authorized to accept in employment within the United States under 8 C.F.R. § 274a.12 and therefore may be subject to removal under section 237(a)(1)(C)(i) of the Act.