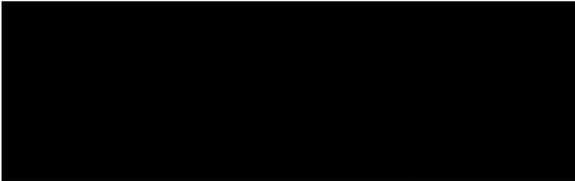




U.S. Citizenship
and Immigration
Services

DH



FILE: SRC 04 091 50558 Office: TEXAS SERVICE CENTER Date:

AUG 04 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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.

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

The petitioner operates an insurance company. It desires to employ the beneficiary as an insurance clerk for nine and one-half months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not established that the position being offered is temporary.

On appeal, counsel states that the reason for the appeal is to show all the efforts made by the employer to recruit United States citizens. Additional evidence has been submitted with the appeal for consideration.

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 petitioner initially indicated that the employment was seasonal but later revised the petition to indicate that the employment is peakload. Counsel also states, in his letter dated February 20, 2004, that the position could be considered a one-time 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).

To establish that the nature of the need is "peakload," the petitioner must demonstrate that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation. 8 C.F.R. § 214.2(h)(6)(ii)(B)(3).

The petition was properly filed on February 9, 2004. The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Reviews premium notices from insurances companies. Types check vouches [sic] requesting payment of premium. Reviews notification from insurance companies of lapse in premium paid by customers for loan collateral, such as real estate, automobiles, and boats. Orders payment of premium and notifies customers of delinquency in premium. Arranges for renewal, transfer or cancellation of insurance coverage. Records dates of insurance expiration and cancellation using computers.

The director determined in her decision that the offered position is not temporary. However, it is the petitioner's need for the services which is controlling. Therefore, it must be shown that the petitioner's need for the beneficiary's services is temporary.

The petitioner is attempting to show that its need for workers is to assist or help its staff during late December through the end of the summer. The petitioner states, in a letter dated March 22, 2004, that this is its high period of the year and the help would alleviate some of the insignificant tasks from her full-time employees. However, the petitioner has not documented its asserted peakload situation by providing data on its usual workload and staffing needs, and the special needs created during December through the end of the summer. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). If the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of immigrant visas.

Further, the petitioner has not established that it will not continually need to have someone perform these services in order to keep its business operational. The petitioner's need for an insurance clerk to perform the duties described on Form ETA 750, which is the nature of the petitioner's business, will always exist. Therefore, the petitioner has not established that a temporary event of short duration has created the need for an insurance clerk. The petitioner has not demonstrated that it needs to supplement its permanent staff on a temporary basis is due to a seasonal or short-term demand. The employment cannot be considered a one-time occurrence, or peakload, and for 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.