



U.S. Citizenship
and Immigration
Services

04



FILE: WAC 03 181 50716 Office: CALIFORNIA SERVICE CENTER Date: **10UG 04 2004**

IN RE: Petitioner: [Redacted]
Beneficiaries: [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:

SELF-REPRESENTED

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

RP
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a general building contractor. It desires to employ the beneficiaries as carpenters for one year. The Government of Guam, Department of Labor, determined that a temporary labor certification by the Governor of Guam could be made. The director determined that the petitioner had not established that its need for the beneficiaries' services is temporary.

On appeal, the petitioner states that its need for importing H-2B workers is temporary, since all building contracts have a target completion date.

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 shall 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 intermittent and that the temporary need is periodic. The petitioner also states, in a letter dated July 23, 2003, that its need for the beneficiaries' services is 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 "intermittent," the petitioner must demonstrate that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods. 8 C.F.R. § 214.2(h)(6)(ii)(B)(4).

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

Constructs, erects, installs, and repairs structures and fixtures of wood, plywood, and wallboard, using carpenter's handtools and power tools, and conforming to local building codes. Studies blueprints, sketches, or building plans for information pertaining to type of materials required, such as lumber or fiberboard, and dimensions of structure or fixture to be fabricated. Selects specified type of lumber or other materials. Prepare[s] layout, using rule, framing square, and calipers. Marks cutting and assembly lines on materials, using pencil, chalk, and marking gage. Shapes materials to prescribed measurements, using saws, chisels, and planes. Assembles, cuts and shapes materials and fastens them together with nails, dowel, pins or glue.

Upon review, the evidence submitted does not establish that the petitioner's need for the services to be performed can be classified as intermittent. Instead, the petitioner has a permanent need for workers to fulfill its construction contracts, which is the specific nature of the petitioner's business. The petitioner has not shown that it occasionally or intermittently needs carpenters to perform services, especially when the petitioner's need for workers is for one year.

The petitioner must demonstrate that it has not employed permanent or full-time workers to perform the services or labor but occasionally needs workers to perform services for short periods. The petition indicates that the petitioner currently employs eight individuals. The petitioner explains that its need for the beneficiaries' services is due to the scarcity of local and United States skilled workers, even after placing its ads locally, and with the Guam Employment Services Department of Labor. 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 carpenters 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 carpenters. The petitioner has not established that its need for the beneficiaries' services is a one-time occurrence, or intermittent and 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 not met that burden.

ORDER: The appeal is dismissed.