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U.S. Citizenship
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Services

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DEC 07 2004

FILE: WAC 03 018 50919 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiaries



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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 engages in the sale of video and graphic designs. It desires to extend its authorization to employ the beneficiaries as graphic designers 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 requests reconsideration and states that it has filed permanent resident applications for these two 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

....

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 a one-time occurrence and that the temporary need is unpredictable.

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)(I).

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

Design art and copy layouts, studies illustrations and photographs to plan presentation of materials, product or services. Determines size and arrangement of illustration material and copy; selects style and size of type and arranges layout based upon available space, knowledge of layout principles and esthetic concepts.

Upon review, the evidence submitted does not establish that the petitioner's need for the services to be performed can be classified as a one-time occurrence. The petitioner states, in its letter dated June 20, 2003, that ". . .our business have been very busy with contracts, sales, and revenue increased." The petitioner states further "They have contributed so much in the short period as our essential employees." The petitioner also states in the letter ". . .and without these graphic designers, our business will lose in sales and existing contracts. . ." 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 has not demonstrated that it has not employed workers to perform the services or labor in the past and it will not need workers to perform the services or labor in the future. The petitioner's need for graphic designers to perform the duties described on Form ETA 750, which is the nature of the petitioner's business, will always exist. The record contains the beneficiaries' Form I-94 Departure Records that show the beneficiaries were admitted into the United States on February 6, 2002 to work for the petitioner. The petitioner is currently requesting a continuation of their previously approved employment. Moreover, the petitioner has filed permanent resident applications on their behalf. Therefore, the petitioner has not established that a temporary event of short duration has created the need for graphic designers and that its need for the beneficiaries' services is a one-time occurrence 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.