

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

OH



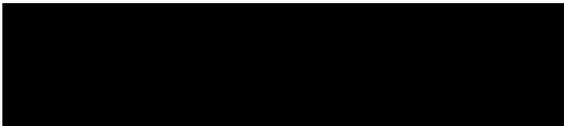
**U.S. Citizenship
and Immigration
Services**



FILE: EAC 03 136 53999 Office: VERMONT SERVICE CENTER

Date: **MAR 04 2004**

IN RE: Petitioner:
Beneficiaries:



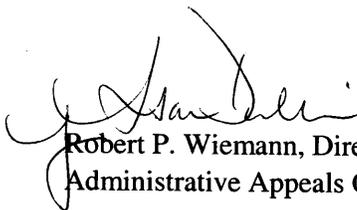
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



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: This is a motion to reopen the Administrative Appeals Office's decision to withdraw the approval of the nonimmigrant visa petition. The motion to reopen will be granted. The petition will be denied because the approval is now moot.

The petitioner engages in soccer instruction and services. It desires to employ the beneficiaries as youth soccer instructors for nine months. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made because there were qualified workers available for the job. The director concluded that the applicants who did respond to the recruitment efforts did not qualify for the positions and certified his decision to approve the petition to the Administrative Appeals Office (AAO).

On certification, the AAO withdrew the director's decision. The AAO concluded that the petitioner had not provided copies of the rejected applicants' resumes, and without them any countervailing evidence fell short of addressing the reasons why the Secretary of Labor could not grant a labor certification. The AAO also concluded that the petitioner had not provided sufficient evidence to demonstrate that its need for the duties to be performed was temporary.

On motion, counsel submits copies of all the rejected applicants' resumes. Counsel also states that the petitioner failed to specify that the need for the employment is seasonal.

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 petition indicates that the employment is seasonal and that the employment recurs annually.

To establish that the nature of the need is "seasonal," the petitioner must demonstrate that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees. 8 C.F.R. § 214.2(h)(6)(ii)(B)(2).

The petitioner has now provided on motion copies of the rejected applicants' resumes. Additionally, the record contains a letter, dated March 28, 2003, that gives a detailed analysis of the individuals' qualifications, and the reasons why they did not qualify for the position. The petitioner has also shown that the services to be provided by the beneficiaries are seasonal and temporary.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that, if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

This decision will have no practical effect because the period of requested employment has passed.

ORDER: The petition is denied because the matter is now moot due to the passage of time.