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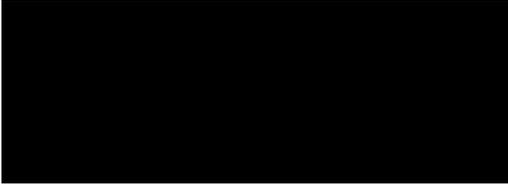
DH

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

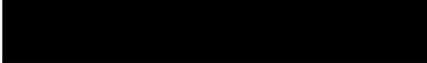


U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 02 241 54930 Office: CALIFORNIA SERVICE CENTER Date: **MAR 04 2004**

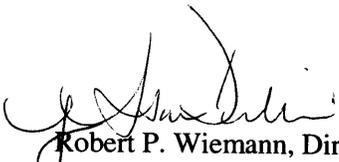
IN RE: Petitioner:   
Beneficiary: 

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:  


**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 operates a residential care home. It desires to employ the beneficiary as a housekeeping cleaner for one year. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that the petitioner had not established that its need for the beneficiary's services is temporary. The director also determined that the petitioner had not provided evidence of its advertisement in the San Jose Mercy News. Further, the director decided that the petitioner had not offered the same terms and conditions to United States applicants.

The director stated in his decision that the petitioner had not provided a temporary labor certification (ETA 750). Upon review, the record contains the notice detailing the reasons why the certification could not be made. Therefore, this issue will not be further addressed.

On appeal, counsel states that Citizenship and Immigration Services (CIS) failed to consider evidence establishing that qualified workers in the United States are not available and erroneously concluded that the offered position is permanent and not a one-time occurrence.

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 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)(1).

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

Clean rooms and halls, performing any combination of following duties: sorts, counts, folds, marks or carries linens. Makes beds. Replenishes supplies, such as drinking glasses and writing

supplies. Checks wraps and renders personal assistance to patrons. Moves furniture, hangs drapes, and rolls carpets. Performs other duties as a cleaner.

In a letter, dated July 5, 2002, the president of the petitioning organization states, in pertinent part:

We currently requires the services of housekeeping cleaner to perform [sic] clean rooms, replenish supplies, serve food, provide some basic medical help and other duties for senior citizens and patients.

Usually we need three full time cleaners to do regular labor work. In late 2001, two former employees left this company without any notice. We really need some staff to help our client[s]. Some clients are patients that need cleaners to wash their body frequently, if necessary. [C]leaners need [to] clean excrement and urine for clients. It is very difficult for us to find a local experienced worker who is willing to do such job. . . .

Upon review, the petitioner's need cannot be considered a one-time occurrence, since housekeeping duties are ongoing and cannot be classified as duties that will not need to be performed in the future. Moreover, the petition indicates that the petitioner currently employees three individuals. Therefore, the petitioner has not demonstrated that it has not employed workers to perform the services or labor in the past. The petitioner has not provided any evidence on appeal of its advertisements in the San Jose Mercy News. Also, the petitioner has not shown that the same terms and conditions were offered to United States applicants.

Further, the petition indicates that the petitioner needs the beneficiary's services for one year. This time period does not demonstrate the petitioner having a temporary event of short duration. Consequently, the employment cannot be considered a one-time occurrence 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.