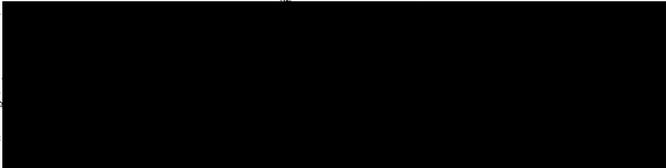




U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 108 50176 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 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:

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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

The petitioner provides environmental consulting services. It desires to employ the beneficiary as an environmental management information system specialist for three years. The director determined that the petitioner had not submitted a temporary labor certification from the Department of Labor (DOL) or notice stating that such certification could not be made and denied the petition.

On appeal, the petitioner states that the certification from DOL was not provided with the petition. The petitioner states that it attempted to find a suitable candidate for the position, but experienced difficulty. The petitioner goes on to state that the Board resolved to petition for the beneficiary, however, it was not anticipated that the DOL would take over 360 days to review and process a certification request.

The regulations stipulate that an H-2B petition for temporary employment in the United States shall be accompanied by a labor certification determination that is either: (1) a certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(iv)(A).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on March 5, 2004 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The petitioner states that it did not anticipate the DOL would take over 360 days to review and process a certification request. However, neither the statute nor the regulations allows for the approval of an H-2B petition for temporary employment based on the filing of an application for permanent labor certification. The acknowledgement letter from the California Employment Development Department, submitted as evidence of the delay in the labor certification process, relates to the beneficiary's application for permanent employment in the United States. The petitioner has not shown that it applied for a temporary labor certification on behalf of the beneficiary as required by the regulations.

This petition cannot be approved for additional reasons. 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 peakload and unpredictable.

The dates of the intended employment for the beneficiary are from April 19, 2004 until April 19, 2007. The job advertisement does not state that the employment is temporary. The petitioner has not established that its need for the beneficiary's services for three years is temporary.

Further, the record does not contain evidence that the beneficiary has three years of experience in the job offered as stipulated in the job advertisement. Initial evidence must be in the form of the past employer's detailed statement or actual employment documents, such as company payroll or tax records. 8 C.F.R. § 214.2(h)(5)(v)(B).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.