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FILE: EAC 03 222 55326 Office: VERMONT SERVICE CENTER

Date:

OCT 04 2005

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

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

The petitioner is a private citizen who desires to employ the beneficiary as a child monitor for one year. The Department of Labor determined that a temporary labor certification by the Secretary of Labor could not be made because the employer had not established a temporary need. The director determined that the petitioner had not established a temporary need for the beneficiary's services and denied the petition.

On appeal, the petitioner states that his current need for childcare would be temporary.

Section 101(a)(15)(H)(ii)(b) of 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 does not indicate whether the employment is a seasonal need, a peakload need, a one-time occurrence or an intermittent need.

In this case, the petitioner has not sufficiently established that its childcare needs are consistent with the test set forth in *Artee*. The petitioner contends that the position and the need are temporary, but in his letter dated May 5, 2004, he states, in pertinent part, ". . . I have entered into an agreement to sell my interests in my business, Utilisave. Because the payout is over time, we are not yet in a position to eliminate our childcare. Further, I am still in the process of researching various alternative business options. Once I have identified a business, I plan to operate from the house, allow my wife to resign from her current job and stay home or at least work on more flexible hours. . . ." The record does not contain the petitioner's agreement to sell his interest in his business or an alternate business plan. Therefore, the petitioner has not established that his childcare needs will end in the near, definable future. The petitioner has not established that his need for the beneficiary's services is a one-time occurrence, a seasonal need, a peakload need, or an intermittent need 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.