



U.S. Citizenship
and Immigration
Services

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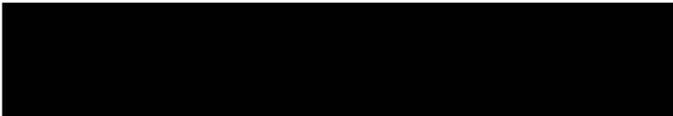
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FILE: SRC 06 035 54034 Office: TEXAS SERVICE CENTER Date: APR 05 2006

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an engineering firm. It desires to employ the beneficiaries as engineers for ten months. The director determined that the petitioner had not established a temporary need for the beneficiaries' services.

On appeal, the petitioner states that its need for employees is temporary.

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 temporary need recurs annually.

To establish that the nature of the need is "seasonal," the petitioner must demonstrate that the services or labor are 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 nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Design, extend, modify and or improve oil and gas facilities and installations; conceptual, basic and detail engineering using 3D design tools; engineering and projects. Availability around the clock might be required; work on plants and on fast track schedules. College degree required. Must pass drug screening test.

In determining whether an employer has demonstrated a temporary need for an H-2B worker, it must be determined whether the job duties, which are the subject of the temporary application, are permanent or

temporary. If the duties are permanent in nature, the petitioner must clearly show that the need for the beneficiary's services or labor is of a short, identified length, limited by an identified event. Based on the evidence presented, a claim that a temporary need exists cannot be justified.

The services to be performed by the beneficiaries are ongoing and the petitioner's need to have additional workers perform these services has not been shown to be seasonal. Herewith, the petitioner has submitted two letters from companies that desire to do business with the petitioner. The petitioner states that the companies need extra help from January 15, 2006 to November 15, 2006 and intend to contract with the petitioner to perform temporary assignments. However, the petitioner has not submitted any contractual and/or financial evidence to demonstrate that its business activity has formed a pattern where its needs for construction workers are traditionally tied to a season of the year and will recur next year at the same time. The 2005 Contract Personnel Services Agreement submitted is neither signed nor dated. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the petitioner states in its letter, dated January 19, 2005, that ". . . For the past months we have tried unsuccessfully to recruit engineers in our local market. . . There seems to be an apparent shortage of available engineers. . . ." If the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of immigrant visas. The petitioner has not established that its need for the beneficiaries' services is seasonal and temporary.

The petition cannot be approved for another reason. The regulation at 8 C.F.R. § 214.2(h)(2) states in pertinent part:

(iii) *Named beneficiaries.* Nonagricultural petitions must include the names of beneficiaries and other required information at the time of filing. Under the H-2B classification, exceptions may be granted in emergent situations involving multiple beneficiaries at the discretion of the director, and in special filing situations as determined by the Service's Headquarters

The petitioner has not listed the names of the beneficiaries on this petition. The petitioner has not presented an emergent situation or clearly described its business reasons as to why the beneficiaries are unnamed. The director did not waive the names of the temporary nonagricultural workers at the time of filing. For this additional reason, the petition may not be approved.

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.