U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: LIN 05 183 52156 Office: NEBRASKA SERVICE CENTER Date: OCT 19 2005

IN RE: Petitioner: [redacted]
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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in the business of linen supply and laundry service. It desires to employ the beneficiaries as laundry processors for five months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not established a temporary need for the beneficiaries' services.

On appeal, the petitioner[1] states that it strongly disagrees that the services are not 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 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 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 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 nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

> Will sort dirty linens, then launder, dry, press, fold and prepare for delivery.

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[1] The petitioner designated Global Resources, Inc. as its special agent to represent it in this proceeding. A properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) must be filed with the appeal by an attorney or an accredited representative. 8 C.F.R. § 103.3(a)(2)(v)(A)(2). 8 C.F.R. 292.1(a)(4). In this case, Form G-28 was not filed by an attorney or an accredited representative.

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.

Citizenship and Immigration Service's (CIS) records reflect that the petitioner had several petitions approved for temporary workers. The approved petitions are as follows:

1. LIN-02-173-55403, approved for six workers and valid from June 24, 2002 until November 1, 2002.
2. LIN-02-292-52094, approved for six workers and valid from December 1, 2002 until May 1, 2003.
3. LIN-03-151-52594, approved for 12 workers and valid from June 1, 2003 until October 10, 2003.
4. LIN-03-195-53517, approved for two workers and valid from June 30, 2003 until October 10, 2003.
5. LIN-03-268-52739, approved for 10 workers and valid from December 11, 2003 until April 1, 2004.
6. LIN-04-006-52099, approved for five workers and valid from December 1, 2003 until April 1, 2004.

The evidence contained in the record of proceeding does not establish the petitioner's need for the beneficiaries' services as seasonal. The financial evidence submitted, which shows the petitioner's monthly revenues from January 1998 until May 2005, indicates a raise in revenues every year for the months of June through September. However, the petitioner has consistently filed for workers outside of this time period demonstrating that its need for workers is more than just a four-month period. The services to be rendered by the beneficiaries are ongoing and the petitioner's need to have additional workers to perform these services cannot be classified as seasonal and temporary. If the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of immigrant visas.

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. The petition is denied.