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U.S. Citizenship  
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Services

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FILE: WAC 04 133 53454 Office: CALIFORNIA SERVICE CENTER Date: **AUG 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private citizen. She desires to employ the beneficiary as a housekeeper and nanny for an undetermined period. The director determined that the petitioner had not submitted a temporary labor certification (Form ETA 750) 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 she would like the petition on behalf the beneficiary to be reconsidered.

The regulation at 8 C.F.R. § 214.2(h)(6)(iii) states in pertinent part:

(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor . . . within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(6)(iv). . . .

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 April 8, 2004 without a temporary labor certification (Form ETA 750) or notice detailing the reasons why such certification cannot be made. Absent such certification from the DOL or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner submits a Form ETA 750 that had not been submitted to the Department of Labor for certification. The regulation requires that, prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner must apply for a temporary labor certificate with the Secretary of Labor for all areas in the United States, except the Territory of Guam. 8 C.F.R. § 214.2(h)(6)(iii)(A). In this case, the petitioner did not apply for a temporary labor certification prior to the filing of the petition.

The petition cannot be approved for other reasons. The petitioner has not established that the beneficiary qualifies for the job offer as specified on Form ETA 750. The record, as it is presently constituted, does not contain evidence of the beneficiary's ten years of training as stipulated on Form ETA 750. 8 C.F.R. § 214.2(h)(6)(vi)(C).

Further, 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 petition indicates that the intended employment is from "ASAP to "date until 2006." 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. The petitioner does not indicate whether the employment is seasonal, peakload, intermittent or a one-time occurrence.

The nontechnical description of the job on Form ETA 750 reads:

I want Anna to be a nanny and some cooking and housekeeping. I have met some of her family when they were for a visit. They went to my church. I have talked to her and we have written to each other for a couple of years. She is a good Christian girl and has baby-sat for her whole family for years. I want to sponsor her at college to get her degree in accounting.

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 beneficiary are ongoing and the petitioner's need for the beneficiary to perform these services has not been shown to be seasonal, peakload, intermittent or a one-time occurrence.

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.