



U.S. Citizenship
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FILE: WAC 09 006 51505 Office: CALIFORNIA SERVICE CENTER Date: **SEP 23 2009**

IN RE: Petitioner:
Beneficiary:



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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a general contractor and it seeks to continue to employ the beneficiaries as cement masons pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from October 1, 2008 until October 1, 2009. The Guam Department of Labor (DOL) determined that the petitioner had submitted insufficient evidence for the issuance of a temporary labor certification by the Secretary of Labor. The director determined that the countervailing evidence submitted by the petitioner was insufficient to overcome the DOL's decision.

The petitioner submitted the Form I-290B on March 19, 2009. The petitioner marked the box at part two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days. The appeal brief was never received by the AAO, thus, the AAO deems the record complete and ready for adjudication.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The only new document submitted on appeal is the Form I-290B, which states the following, verbatim:

The California Service Center erred in denying Petitioner's Form I-129 petition for nonimmigrant workers. The evidence submitted establishes that Petitioner has a need to supplement its permanent staff on a short term basis, and in response to a limited growth in Guam's business and home building. With regard to any discrepancies in Petitioner's submissions, such discrepancies have been and will be explained satisfactorily. The California Service Center also erred in finding that Petitioner failed to submit the required notice detailing the reason why Guam DOL determined that the labor certification could [not] be made. The denial from Guam DOL was attached as exhibit 7 to Petitioner's application.

As a preliminary matter, on appeal, counsel for the petitioner indicated that the petitioner did in fact submit the DOL's decision of the petitioner's application for temporary labor certification. On review of the record, the Guam DOL's decision letter, dated September 26, 2008, was in fact in the record. The AAO will withdraw this part of the director's decision.

In regards to the director's conclusions that the petitioner failed to submit sufficient evidence to show the petitioner's need for the services or labor is a peakload need, and its conclusion that the petitioner provided several inconsistent facts and statements on record, the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

On appeal, counsel for the petitioner states that the “evidence submitted establishes that Petitioner has a need to supplement its permanent staff on a short term basis,” however, this does not identify any erroneous conclusion of law or statement of fact. As indicated by the petitioner in its attachment to the Form I-129, the petitioner submitted this petition because there are no qualified workers available “due in part to a very limited skilled-labor market on an island with a small overall population.” The petitioner also stated that the workers are needed “in order for the employer to be able to perform on its contracts.”

In this instance, the petitioner has not carefully documented the peakload need through data on its annual historical need for additional supplemental labor, its usual workload and staffing needs, and the special needs created by the current situation or contracts. The petitioner has not demonstrated that the additional personnel needed to fill the peakload positions will be engaged in different duties or had different skills than the workers currently employed by the company. Consequently, the petitioner has not demonstrated that its need to supplement its permanent staff at the place of employment on a temporary basis is due to a short-term demand and that the temporary additions to the staff will not become a part of the petitioner’s regular operation. 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)).

Further, the petitioner has not established that it will not continually need to have someone perform these services in order to keep its business operational. The petitioner's need for construction workers to perform the duties described on Form ETA 750, which is the nature of the petitioner's business, will always exist.

In addition, the director noted in her decision several inconsistencies in the truth and accuracy of the information provided in support of the petition. On appeal, counsel for the petitioner indicated that the discrepancies will be explained. Again, the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. For this additional reason, the appeal must be dismissed and the petition denied.

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

ORDER: The appeal is summarily dismissed. The petition is denied.