

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



84

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 21 2011

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.

Thank you,

Perry Rhew
Chief, 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 sustained and the petition will be approved, although the matter is moot due to the passage of time.

The petitioner provides hotel and other services at national parks and it seeks to employ the beneficiaries as housekeepers 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 April 1, 2010 until November 10, 2010.

The director denied the petition on April 29, 2010, concluding that the petitioner had not established a temporary need for the beneficiaries' services.

On appeal, the petitioner submits the 2009 profit and loss amounts for each month in 2009. According to the chart, the petitioner's profit is drastically lower in the months of November through January, and sales increase starting in April and stay high until October. The chart showing the petitioner's profits for 2009 clearly indicate a peakload need from April through October.

The director noted in her decision that the petitioner did not employ any housekeepers from November until April and thus, the job position of housekeeper is not a full-time permanent position which the petitioner needs to supplement during a peak-load season. On appeal, the petitioner confirmed that its permanent employees assume the duties of housekeeper during the winter months. Specifically, the maintenance manager, the assistant maintenance manager and the custodial maintenance employees perform housekeeping duties. The petitioner notes that the need for housekeeping services drops drastically in the winter months and thus, the permanent employees listed above can perform their regular duties and take over the limited housekeeper duties that are required during the winter months.

The director also noted that the petitioner has not previously employed H-2B workers in 2009. The petitioner stated that it misunderstood the director's request for evidence and only provided a list of its permanent employees. On appeal, the petitioner submits a list of its H-2B employees for 2009 which include 2 housekeepers and nine food attendants.

On appeal, the petitioner has overcome the concerns addressed in the director's decision. Moreover, sufficient evidence has been submitted to establish that the beneficiaries are eligible for H-2B classification.

It is noted that the petitioner requested the beneficiaries' services from April 1, 2010 until November 10, 2010. Therefore, the period of requested employment has passed.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.