U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: SRC 99 181 52382 Office: Texas Service Center Date: MAR - 7 2000

IN RE: Petitioner:
Beneficiarie [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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance O'Reilly

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and certified to the Associate Commissioner for Examinations for review. The director's decision to deny the petition will be affirmed and the petition will be denied.

The petitioner is in the business of providing accounting and computer services. It desires to employ the beneficiaries as COBOL technicians for a period of one year. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that the petitioner had not established that the need for the services to be performed is temporary.

On certification, counsel states that the positions are solely for the purpose of handling Y2K computer problems and that the Y2K issues are temporary problems which will ultimately be resolved within the first several months of the year 2000.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii), 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, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), as codified in current regulations at 8 C.F.R. 214.2(h)(6)(ii), specified that 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. See 55 Fed. Reg. 2616 (1990).

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 a one-time occurrence. The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-

time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future.

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750A) reads "to troubleshoot clients Y2K system problems. Writes and maintains computer programs to store, locate, and retrieve specific documents, data and information. Develops computer programs for input and retrieval of information. Writes programs for classification, indexing, input, storage, and retrieval of data and facts, display devices and interfacing with other systems equipment. Devises sample input data to test adequacy of program and witnesses or runs test of program using sample or actual data. Corrects errors by altering program steps and sequence." The petitioner has not shown that the beneficiaries' services are a one-time occurrence and will not be needed in the future. The petitioner has not established that the need for the services to be performed is temporary.

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 director's decision to deny the petition will be affirmed. The petition is denied.