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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: LIN 02 013 53631 Office: Nebraska Service Center Date: JAN 16 2002

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be withdrawn. The petition will be approved.

The petitioner is an individual who is being transferred outside the United States on a temporary assignment for a period of up to two years. He seeks to employ the beneficiary temporarily in the United States as a groundskeeper and caretaker for a period of one year. The certifying officer of the Department of Labor ("DOL") declined to issue a labor certification, determining that the petitioner's need for the beneficiary's services is not temporary. The certifying officer further found that the petitioner's requirement that the household manager and the groundskeeper/caretaker be a married live-in couple was unduly restrictive.

The director found that the jobs offered to the beneficiary and his spouse were a one-time occurrence and therefore temporary. The director further found that the petitioner's need for a live-in couple had been adequately established, but that the petitioner had not shown why the couple needed to be married.

Finally, although the certifying officer's attachment to the application for alien employment certification indicated that the petitioner's efforts to recruit U.S. workers had been unsuccessful, the director stated that he believed that "qualified U.S. citizen workers are available for the position." This finding by the director is withdrawn, as the availability of U.S. citizen workers in a particular geographical area is an issue within the jurisdiction of the DOL. The DOL has already indicated that the petitioner's attempts to locate U.S. citizen workers were unsuccessful, although efforts had been made through five employment agencies, three job recruitment offices, and advertisements placed in two newspapers and the internet.

Service regulations at 8 CFR 214.2(h)(6)(iv)(A) require that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the DOL, or notice detailing the reasons why such certification cannot be made. The regulations at 8 CFR 214.2(h)(6)(iv)(E) state that a petition not accompanied by an approved temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

In response to the notice of certification, counsel has submitted a letter explaining that the living accommodations in the house are limited to a single living quarter, unsuitable for other than a married couple. The letter explains that security considerations

are the reason for the requirement for the temporary workers to live in the house. The director conceded this issue, which had been raised by DOL. The job offered is clearly a one-time occurrence, and is therefore temporary. The director also conceded this issue, which had also been raised by DOL.

Counsel's response to the notice of certification meets the requirements of 8 CFR 214.2(h)(6)(iv)(E), and the petition may therefore be approved.

ORDER: The decision of the director is withdrawn. The visa petition is approved.