D4

U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: SRC 01 220 50877 Office: Texas Service Center Date: MAY 15 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]

Public Copy

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a resort staffing provider which seeks to employ the beneficiary as a cleaner/housekeeper for a period of seven months. The certifying officer of the Department of Labor (DOL) declined to issue a temporary labor certification because he determined that the petitioner had not established a temporary need for the beneficiary's services.

8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made. 8 C.F.R. 214.2(h)(6)(iv)(E) states that a petition not accompanied by a 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, the petitioner argued that the proffered position is seasonal and that United States workers are not available.

The director determined that the petitioner had established that the position is temporary and that the policies of the DOL have been observed.

After review of the evidence contained in the record, the decision of the director is found to be correct. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner sustained that burden. Accordingly, the decision of the director will be affirmed.

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