

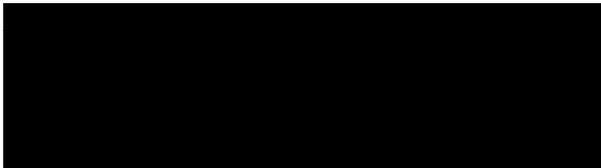
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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 04 131 50576 Office: NEBRASKA SERVICE CENTER

Date:

2006

IN RE: Petitioner:  
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a)

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a farm labor contractor and contract harvester. It desires to employ the beneficiaries as farm workers for ten months. The director determined that the petitioner had filed the instant petition using a labor certification that had already been utilized for the maximum allowable number of alien workers and denied the petition.

On appeal, counsel states that the director erred in finding that the instant petition, LIN-04-131-50576, for 16 H-2A agricultural workers used a labor certification that had been utilized in a previous approved petition. The petitioner explains that it wanted to utilize the labor certification in its approved petition, LIN-04-111-54279, by substituting 16 of the 121 unnamed workers, with workers it already had in the United States. These 16 workers are named in the petitioner's previously approved petition, WAC-03-234-52110, and their work had recently terminated.

The regulation at 8 C.F.R. § 214.2(h)(5) states in pertinent part:

(ix) *Substitution of beneficiaries after admission.* An H-2A petition may be filed to replace H-2A workers whose employment was terminated early. The petition must be filed with a copy of the certification document, a copy of the approval notice covering the workers for which replacements are sought, and other evidence required by paragraph (h)(5)(i)(D) of this section. It must also be filed with a statement giving each terminated worker's name, date and country of birth, termination date, and evidence the worker has departed the United States. . . .

The Petition for a Nonimmigrant Worker (Form I-129) was filed on April 1, 2004 for 16 H-2A farm workers to work in Harrah, WA. The workers are currently in the United States in legal H-2A status working for the petitioner, Global Horizon Manpower, Inc., in Bakersfield, Ca., under the approved petition WAC-03-234-52110. This petition was valid from August 30, 2003 until April 30, 2004 and the beneficiaries were authorized to remain in the United States until such date.

The petitioner filed the current petition, LIN-04-131-50576, to make a change in the beneficiaries' previously approved employment. The petitioner desires to transfer the 16 farm workers named in this petition to its new job site in Harrah, Washington, utilizing the labor certification it filed with its approved petition, LIN-04-111-54279, for 121 unnamed beneficiaries. The approved petition, LIN-04-111-54279, was valid from March 12, 2004 until November 5, 2004.

The petition, LIN-04-111-54279, was approved March 15, 2004 for 121 unnamed workers and notification was sent to Bangkok. The labor certification relating to the petition was granted March 3, 2004 for 121 workers, and thereafter, a redetermination of the petitioner's labor certification request was granted for 131 workers on March 18, 2004. In this case, the petitioner did not submit the names, date and country of birth and number of workers who were admitted into the United States under the approved petition, LIN-04-111-54279, and how many of the 121 positions remain available. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of*

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*California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent such evidence, Citizenship and Immigration Services (CIS) cannot utilize the labor certification the petitioner filed with LIN-04-111-54279 for the current petition.

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

**ORDER:** The appeal is dismissed.