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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 023 52339 Office: VERMONT SERVICE CENTER Date: **JAN 05 2005**

IN RE: Petitioner:
Beneficiary:



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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner engages in the planting of trees, shrubbery, flowers and conducting nursery sales. It desires to employ the beneficiary as a farm and nursery worker for nine months. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA 750, from the Department of Labor (DOL), or notice stating that such certification could not be made and denied the petition.

On appeal, the petitioner requests a 60-day extension to obtain a copy of the beneficiary's labor certification denial. The petitioner states that it is certain it can obtain the document within the allotted time.

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

An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

The petition was filed on October 31, 2003 without a temporary agricultural labor certification that had been certified by the DOL or notice detailing the reasons why such certification cannot be made. Absent such certification from the DOL or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner requests a 60-day postponement to obtain a copy of the beneficiary's labor certification denial. However, neither the statute nor regulations allow for the acceptance of a labor certification or denial notification obtained subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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.

This decision is without prejudice to the filing of a new petition accompanied by the proper documentation and fee.

ORDER: The appeal is dismissed.