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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 057 53110 Office: VERMONT SERVICE CENTER Date: MAR 17 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [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)

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private citizen who desires to employ the beneficiary as a household manager and administrative assistant for one year. The director determined that the petitioner had not submitted a temporary labor certification [ETA 750A] from the Department of Labor (DOL) or notice stating that such certification could not be made and denied the petition.

On appeal, counsel states that the director's decision was arbitrary and otherwise not in accordance with law, because a DOL certification is not required and Citizenship and Immigration Services (CIS) is required to make an independent determination of the facts supporting a petition.

The regulations stipulate that an H-2B petition for temporary employment in the United States shall be accompanied by a labor certification determination that is either: (1) a certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(iv)(A).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on December 10, 2002 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner submits the final determination notice from the DOL dated September 5, 2003 that states Form ETA 750A has not been certified. The petitioner applied for a temporary labor certification on January 29, 2003, subsequent to the filing of the petition, and a determination was not rendered until September 5, 2003. Neither the statute nor regulations allow for the acceptance of a labor certification 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 petition cannot be approved for other reasons. The record does not contain evidence that the beneficiary possesses two-four years of college culminating in an associate or bachelor of science degree, one year of training in bookkeeping and one year of experience in the job offered as stipulated on Form ETA 750. 8 C.F.R. § 214.2(h)(6)(vi)(C).

Further, 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 petition indicates that the intended employment is for one year and that the employment is a one-time occurrence. 8 C.F.R. § 214.2(h)(6)(ii)(B).

The petitioner explains in Section 2 of the petition that she presently has four households (two under construction, one rental property and one under temporary lease) and needs a temporary manager and

administrative assistant to help during this transitional period until the construction process is completed. The petition has not stated when she expects the project to be completed. Therefore, the petitioner has not shown that a temporary event of short duration has created the need for the beneficiary's services.

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.