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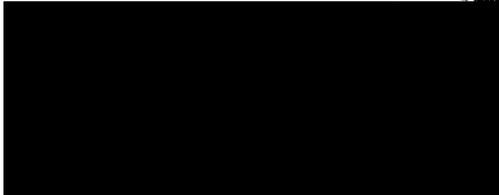


**U.S. Citizenship  
and Immigration  
Services**

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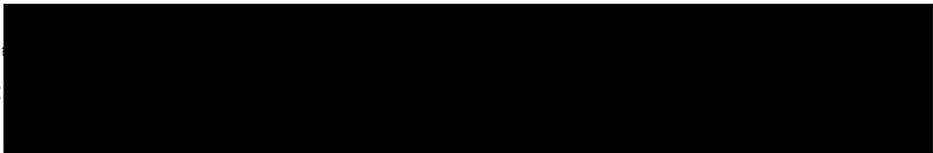
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**DEC 07 2004**



**FILE:** SRC 04 130 50250      **Office:** TEXAS SERVICE CENTER      **Date:**

**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:**

**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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the case remanded for further action and consideration.

The petitioner engages in the business of farming. It desires to employ the beneficiaries as farm workers 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 submits Form ETA 750 that has been certified by the DOL. Therefore, the objection of the director has now been satisfied. However, the petition may not be approved for another reason.

The record does not contain evidence that the beneficiaries have six months of experience in the job offered as stipulated on Form ETA 750. Initial evidence must be in the form of the past employer's detailed statement or actual employment documents, such as company payroll or tax records. 8 C.F.R. § 214.2(h)(5)(v)(B).

Since the aforementioned issue was not discussed in the director's decision, the case will be remanded so that the director may properly address this issue and allow the petitioner time to submit additional evidence in support of the petition. The director may also request any additional evidence deemed warranted. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action and consideration consistent with the above decision and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.