

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

D3

DEC 07 2004

FILE: EAC 04 023 52381 Office: VERMONT SERVICE CENTER

Date:

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.

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 The director's decision will be withdrawn although the petition is now moot.

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 petition was filed without a temporary labor certification from the Department of Labor (DOL) or notice stating that such certification could not be made.

On appeal, the petitioner requests a 60-day extension in order to obtain copies of the labor certification denial for the beneficiary.

In its decision, the director inadvertently cited the H-2B regulations. The petition indicates that the requested nonimmigrant classification is H-2A. Therefore, the denial was substantiated by the wrong regulations.

This case should be remanded to the director to correct his decision and determine whether the beneficiary qualifies for H-2A classification upon submission of the required temporary labor certification or notice stating such certification could not be made. However, to remand this case for a new decision would have no practical effect because the period of requested employment (March 15, 2003 until December 15, 2003) has passed.

ORDER: The petition is denied because the matter is moot due to the passage of time.