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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: WAC 04 203 53233 Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2005

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

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

The petitioner engages in agriculture and bee keeping. It desires to employ the beneficiary as a beekeeper for an indeterminate period. 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.

The petitioner states that he is submitting additional information with the appeal.

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 July 13, 2004 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 Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner submits a copy of a prevailing wage request and Form ETA 750 that had not been submitted to the Department of Labor for certification. The regulation requires that a petition must be filed with a single valid temporary agricultural labor certification. 8 C.F.R. § 214.2(h)(5)(i)(A). In this case, the petitioner did not apply for a temporary agricultural labor certification prior to the filing of the petition. Neither the statute nor regulations allow for the acceptance of a temporary agricultural 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).

This petition cannot be approved for another reason. The petition indicates that the dates of intended employment are from visa approval until visa exp. Absent a specific time period, the petitioner has not established that its need for the beneficiary's service is temporary.

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.