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U.S. Department of Homeland Security

Citizenship and Immigration Services

*Handwritten initials: DH*

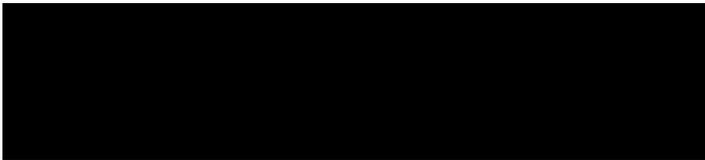
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prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street N.W.

Washington, DC 20536



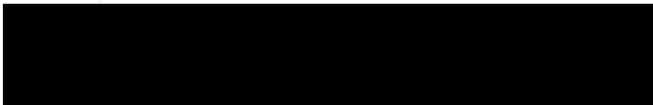
FILE: LIN 02 030 55387

Office: Nebraska Service Center

Date: **NOV 26 2003**

IN RE: Petitioner:

Beneficiaries:



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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Handwritten signature of Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner engages in the lodging and hospitality business. It desires to extend its authorization to employ the beneficiaries as housekeepers for seven months. The petition was not accompanied by the required temporary labor certification, ETA-750. The director determined that, absent the certification, the petitioner has failed to comply with the regulatory requirements regarding the filing of petitions under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

On appeal, counsel states that the severity of the employer's need and the time frame involved did not allow for filing the labor certification.

The regulation at 8 C.F.R. § 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made.

The petition was filed on November 7, 2001 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. The regulation requires that, prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner must apply for a temporary labor certificate with the Secretary of Labor for all areas in the United States, except the Territory of Guam 8 C.F.R. § 214.2(h)(6)(iii)(A). Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.