

PUBLIC COPY

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

U.S. Department of Homeland Security

Citizenship and Immigration Services

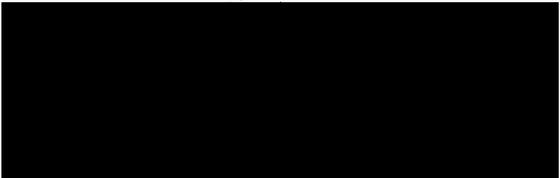
OH

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street N.W.

Washington, DC 20536



FILE: EAC 02 264 50187 Office: Vermont Service Center

Date: **NOV 26 2003**

IN RE: Petitioner: 
Beneficiary: 

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: Self-represented

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.


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 rejected.

The petition indicates that the beneficiary desires to work in the United States for an indefinite period. The petition was not accompanied by the required temporary labor certification, ETA-750.

On December 5, 2002, the director requested that the beneficiary submit either the temporary labor certification, or the notice stating the reasons why the labor certification could not be made. The director also requested evidence to establish that the need for the beneficiary is temporary, and that the beneficiary qualifies for the job offered. The petitioner did not respond to the request. Therefore, the director determined that, absent the certification, the beneficiary is ineligible for classification as a nonimmigrant temporary worker. The director also determined that the beneficiary had left the United States during the processing of this petition, and returned on December 23, 2002. Therefore, the director determined that the petition had been abandoned.

On appeal, the petitioner, who is also the beneficiary, states that he left the United States because his wife and son were requesting a visa at the Embassy, and they were told that they wanted to see his actual passport.

Under section 101(a)(15)(H) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H), an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. In this case, the beneficiary petitioned for himself. A beneficiary cannot self-petition.

The petitioner also states on appeal that he already sent the labor certification to the Department of Labor and is waiting for the response.

Notwithstanding the lack of a temporary labor certification or notice of finding, the regulation at 8 C.F.R. § 103.2(a)(15) states, in pertinent part, that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

The regulation cited above precludes the AAO from considering any appeal that is filed pursuant to a denial due to abandonment. Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.