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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



D4

APR 20 2004

FILE: SRC 02 141 53822 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

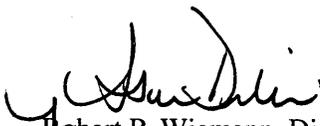


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is engaged in garden design and landscaping. It desires to extend its authorization to employ the beneficiary as a laborer for one year. The director determined that the petitioner had not established that the position is seasonal and temporary. The director also determined that the petition was submitted without a labor certification or a notice detailing the reasons why such certification could not be made.

The beneficiary states that at the time of filing the I-129, the United States Department of Labor Employment and Training Administration had previously approved Mr. [REDACTED]. The beneficiary also states that the documentation regarding the final determination, which had been previously filed for him, is attached.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

*(B) Meaning of affected party.* For purposes of this section and §§103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.3(a)(2) states:

*(v) Improperly filed appeal-* (A) *Appeal filed by person or entity not entitled to file it-* (1) *Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner or an affected party, but rather by the beneficiary. Therefore, the appeal must be rejected.

**ORDER:** The appeal is rejected.