



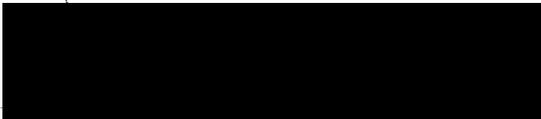
U.S. Citizenship
and Immigration
Services

DH



FILE: LIN 03 125 53439 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



AUG 04 2004

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

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prevent clearly unwarranted**

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

The petitioner is a sheep rancher. It desires to extend its authorization to employ the beneficiary as a shepherd for one year. The director determined that the temporary agricultural labor certification, Form ETA 750, was filed subsequent to the filing of the visa petition. The director also determined that the dates of intended employment indicated on the petition differed from the dates of intended employment on Form ETA 750.

On appeal, the petitioner states that when the ETA 750 was submitted to the Department of Labor (DOL), the DOL's region office changed the validity.

Upon review, the DOL did change the intended employment dates. However, this petition cannot be approved.

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 March 10, 2003 without a temporary agricultural labor certification that had been certified by the DOL or notice detailing the reasons why such certification cannot be made. On March 20, 2003, Citizenship and Immigration Services sent the petitioner a letter requesting that it submit an ETA 750 bearing the DOL's certification. Although the petitioner applied for a temporary labor certification on March 6, 2003, prior to the filing of the petition, a determination was not rendered until March 17, 2003, which is subsequent to the filing date of the petition. Neither the statute nor regulations allow for the acceptance of a 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).

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.