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U.S. Citizenship
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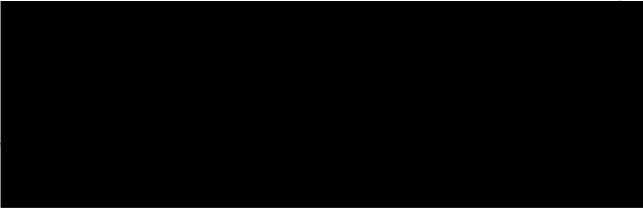
FILE: LIN 04 110 51647 Office: NEBRASKA SERVICE CENTER Date:

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

The petitioner is in the business of providing helicopter services in support of activities such as forestry and fire-fighting operations during the fire season. It desires to employ the beneficiaries as helicopter pilots for eight and one-half months. The director determined that the petitioner had not submitted a temporary 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.

On appeal, counsel states that the labor certification was approved prior to the filing of the petition.

The regulations stipulate that an H-2B petition for temporary employment in the United States shall be accompanied by a labor certification determination that is either: (1) a certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(iv)(A).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on March 8, 2004 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. On appeal, counsel submits a copy of the final determination notice from the DOL dated March 5, 2004. The notice states that the Application for Alien Employment Certification, Form ETA 750A, has been certified and is enclosed. Therefore, the petitioner has now established that the temporary labor certification was obtained prior to the filing of the nonimmigrant visa petition. The petitioner has also provided evidence of the beneficiaries' qualifications and established that the need for the beneficiaries' services is seasonal and 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 met that burden.

ORDER: The appeal is sustained. The petition is approved.