



U.S. Citizenship
and Immigration
Services

DH

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JUN 10 2004

IN RE:

Petitioner:

Beneficiaries:

[REDACTED]

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:

[REDACTED]

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.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 operates a resort hotel. It desires to employ the beneficiaries as kitchen helpers for seven and one-half months. The director determined that the petitioner had not submitted a temporary labor certification 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 obtained prior to the filing date of the petition. Counsel also states that a copy of the certification is attached.

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 4, 2004. On appeal, counsel submits a copy of the final determination notice from the DOL dated March 1, 2004. The notice states that the Application for Alien Employment Certification, Form ETA 750A, has been certified and is enclosed.

In a letter, dated March 12, 2004, counsel explains that the approved labor certification was inadvertently not enclosed with the I-129 H-2B petition. In this same letter, counsel enclosed the original approved labor certification and asked that it be associated with the petitioner's file.

The actual date the approved labor certification was received by counsel from the DOL cannot be ascertained. However, the petitioner did apply for a temporary labor certification on January 6, 2004, prior to the filing of the petition, and such certification was approved on March 1, 2004. Further, it has been determined that the reason the beneficiaries are unnamed on the petition is justified in this case. The petitioner has established that the positions offered are 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.