

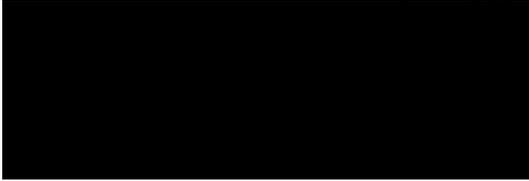
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U.S. Citizenship
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Services

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invasion of personal privacy**



FILE: EAC 02 258 54095 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



MAR 02 2004

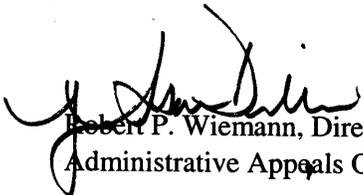
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The petitioner desires to employ the beneficiary as a child monitor for one year. The petition was not accompanied by the required labor certification, Form ETA-750. The director determined that the petitioner had not submitted the additional evidence requested within the allotted time period and denied the petition.

On appeal, counsel states that the Service failed to comply with the regulations in adjudicating the petition and ignored the evidence provided by the petitioner.

The regulation at 8 C.F.R. § 103.2(b) states in pertinent part:

(8) *Request for evidence.* Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

(ii) Submit some or none of the requested additional evidence and ask for a decision based on the record

Upon review, the record does not support the director's decision. The petition was filed on August 7, 2002. The director's notice to the petitioner, dated October 9, 2002, requested that the additional evidence listed in the notice be submitted on or before January 4, 2003. On December 2, 2003, counsel on behalf of the petitioner, resubmitted the notice with some of the evidence requested, but asked for an additional 60 days to obtain the required labor certification.¹ In the alternative, counsel asked that the director approve the petition without the certification from the Department of Labor (DOL). The director did not consider counsel's request absent the required labor certification. Instead, on February 3, 2003, the director denied the petition citing the above regulation as it relates to the granting of additional time.

On appeal, counsel states that the Service failed to comply with the regulations in adjudicating the petition. Although, the language in counsel's letter did not specifically request the director to render a decision, it was implied. To remand this case for the director to render a decision would have no practical effect because the period of requested employment has now elapsed. Therefore, the issue in this proceeding is moot.

ORDER: The appeal is dismissed.

¹ Although counsel's response is dated December 2, 2003, the AAO notes that counsel could not have submitted the response in December 2003 because the petition was not denied until February 2003. It is presumed that the correct date of the letter should have been December 2, 2002.