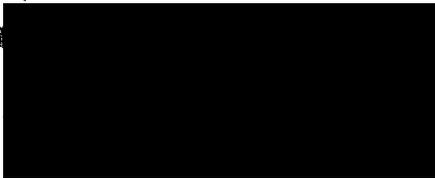




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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FILE: LIN 04 202 50891 Office: NEBRASKA SERVICE CENTER Date: AUG 04 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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 producer. It desires to employ the beneficiary as a shepherd for eleven months. The director determined that the petitioner had not established that the beneficiary possesses the educational requirements stipulated on the temporary labor certification (Form ETA 750).

On appeal, the petitioner states that it is not necessary to have six years of grade school and six years of high school to perform the duties of herding sheep.

The regulation at 8 C.F.R. § 214.2(h) states in pertinent part:

(v) *The beneficiary's qualifications – (A) Eligibility requirements.* An H-2A petitioner must establish that any named beneficiary met the stated minimum requirements and was fully able to perform the stated duties when the application for certification was filed.

The Application for Alien Employment Certification (Form ETA 750) at Part A indicates that the minimum amount of education required to perform satisfactorily the job duties is six years of grade school and six years of high school. The petitioner has not established that the beneficiary possesses the educational requirements stipulated on the Form ETA 750. Absent evidence of the beneficiary's education, as stipulated on the Form ETA 750, the petition cannot be approved.

On appeal, the petitioner states that the education requirements are no longer necessary to perform the proffered job. However, the regulations stipulate that the beneficiary must meet the requirements stated on the Form ETA 750 when the application for certification was filed. The petitioner has not established that the beneficiary possesses the education requirements. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *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.

ORDER: The appeal is dismissed.