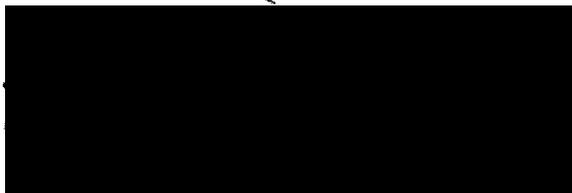




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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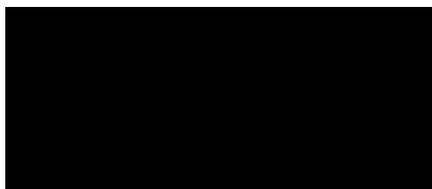
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FILE: EAC 05 024 53083 Office: VERMONT SERVICE CENTER Date: AUG 10 2005

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



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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in swimming pool management. It desires to employ the beneficiary as a pool coordinator for one year. The director determined that the petitioner had not submitted a temporary labor certification (Form ETA 750) that had been certified by the Department of Labor (DOL) or notice stating that such certification could not be made and denied the petition.

On appeal, counsel states that it seeks the opportunity to hire the beneficiary based on the employment certification included with the appeal. However, the record as it is presently constituted does not contain the certification counsel claims was included with the appeal.

The regulation at 8 C.F.R. § 214.2(h)(6)(iii) states in pertinent part:

(C) The petitioner may not file an H-2B petition unless the United States petitioner has applied for a labor certification with the Secretary of Labor . . . within the time limits prescribed or accepted by each, and has obtained a labor certification determination as required by paragraph (h)(6)(iv). . . .

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 November 3, 2004 with a temporary labor certification (Form ETA 750) that had not been certified by the DOL. Absent such certification from the DOL or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The petition cannot be approved for another reason. The record, as it is presently constituted, does not contain evidence of the beneficiary having one month of lifeguard, CPR and pool operator training and four years of high school education that is equivalent to four years of high school education in the United States. The petitioner has not established that the beneficiary qualifies for the job offer as specified on Form ETA 750. 8 C.F.R. § 214.2(h)(6)(vi)(C).

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.