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FILE: SRC 05 060 50686 Office: TEXAS SERVICE CENTER Date: **AUG 25 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:



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

The petitioner operates an agricultural greenhouse. It desires to employ the beneficiary as an agricultural worker for an undetermined period. The director determined that the petitioner had not submitted a temporary agricultural 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, the beneficiary states that the Form ETA 750 has been sent to the Department of Labor.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.3(a)(2) states:

(v) *Improperly filed appeal-(A) Appeal filed by person or entity not entitled to file it-(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner or an affected party, but rather by the beneficiary. Therefore, the appeal must be rejected.

**ORDER:** The appeal is rejected.