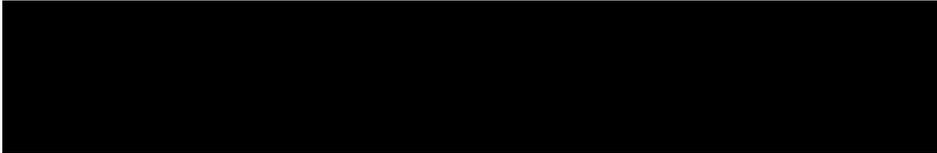


PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D4

FILE: EAC 04 145 51468 Office: VERMONT SERVICE CENTER

Date: JUL 13 2005

IN RE: Petitioner:
Beneficiary



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:

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

In order to employ the beneficiary as a dishwasher/prep cook, the petitioner, a restaurant, endeavors to classify the beneficiary as a temporary nonagricultural 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).

The director denied the petition on the basis that the petitioner had failed to obtain a temporary labor certification from the Department of Labor (DOL), or a notice stating that such certification could not be made, prior to filing the H-2B petition.

The beneficiary alone, not an authorized representative of the petitioner, signed the Form I-290B, Notice of Appeal. Citizenship and Immigration Services regulations specifically state that a beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As he is not a recognized party, the beneficiary is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.