

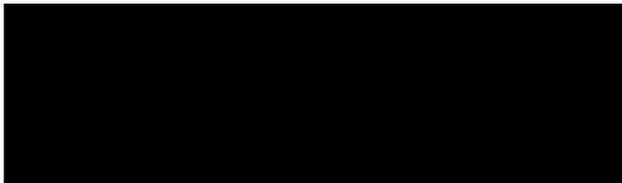
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



D4

FILE: EAC 05 020 50121 Office: VERMONT SERVICE CENTER

Date: **SEP 13 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. An appeal was subsequently filed and rejected. A new appeal has been filed and is now before the Administrative Appeals Office (AAO) for review. The appeal will be rejected.

The petitioner operates a restaurant. It desires to employ the beneficiary as a food server for one year. The director determined that the petitioner had not submitted a temporary labor certification from the Department of Labor (DOL) or notice stating that such certification could not be made and denied the petition.

An appeal has been filed by [REDACTED] who is the general manager of the [REDACTED] Cape May, New Jersey.

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.

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's new prospective employer. The record does not establish that the petitioner, [REDACTED], is the same corporation as the [REDACTED] therefore, the appeal must be rejected.

ORDER: The appeal is rejected.