

**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3042  
Washington, DC 20529

**identifying data deleted to  
prevent clear, unwarranted  
invasion of personal privacy**



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

84



FILE: EAC 07 111 50733 Office: VERMONT SERVICE CENTER Date: **JUL 31 2007**

IN RE: Petitioner:  
Beneficiaries:



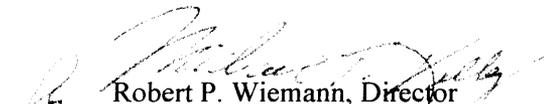
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed and the petition will be denied.

The petitioner operates a golf club. It desires to employ the beneficiaries as maintenance workers from April 1, 2007 until December 22, 2007. 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.

On certification, the director states that the petitioner may appeal this decision. However, there is no appeal from a decision which has been certified to the AAO. 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). Further, the petitioner did not submit any additional evidence for consideration. Therefore, the record will be considered complete.

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 March 12, 2007 without a temporary labor certification, or notice detailing the reasons why such certification could not be made. Absent such evidence, the petition could not be approved.

On March 23, 2007, the director issued a notice of intent to deny the petition, that afforded the petitioner 30 days from the date of the notice to submit a certified temporary labor certification (Form ETA 750) from the Department of Labor issued prior to the petition's filing date or notice stating why such certification could not be made. In its response to the director's request for evidence, the petitioner submitted a copy of the original approved temporary labor certification that had been certified on April 12, 2007, subsequent to the petition's filing date.

The regulation at 8 C.F.R. § 214.2(h)(6)(iii)(E) states that:

After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the petitioner shall file a petition on I-129, accompanied by the labor certification determination and supporting documents, with the director having jurisdiction in the area of intended employment.

In this case, the petitioner obtained a labor certification determination subsequent to the filing of the petition. Neither the statute nor regulations allow for the acceptance of a labor certification obtained subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *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 decision of the director is affirmed. The petition is denied.