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U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 274 53211 Office: TEXAS SERVICE CENTER Date: MAR 04 2004

IN RE: Petitioner: [redacted]
Beneficiaries:

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:

[redacted]

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 is engaged in the harvesting of citrus fruits. It desires to employ the beneficiaries as laborers for an unknown period. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA750, from the Department of Labor (DOL) when filing the petition.

On appeal, the petitioner's representative states that the current year crop is ready, and the trainees' visas may expire before authorization can be fully processed. The petitioner's representative had indicated that he would submit a brief and/or evidence to the AAO by November 21, 2002; however, the record does not contain any additional evidence. The AAO, therefore, considers the record complete.

The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) states in pertinent part:

> An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

The petition was filed on September 20, 2002, without a temporary agricultural labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

This petition cannot be approved for another reason. The page of the Petition for a Nonimmigrant Worker, Form I-129, that indicates the length of the intended employment is not contained in the record of proceeding. Since the dates of the intended employment are unknown, the petitioner has not shown that its need for the beneficiaries' services is temporary.

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.