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U.S. Citizenship
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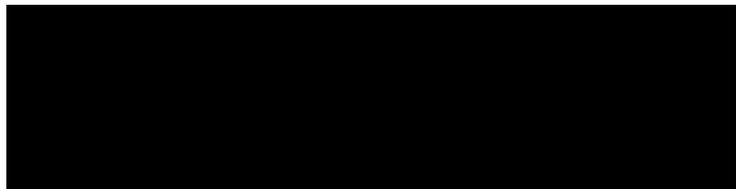
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FILE: LIN 03 270 51287 Office: NEBRASKA SERVICE CENTER Date: JAN 05 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn although the petition is now moot.

The petitioner engages in the business of supplying and holding raw materials to be used in the manufacture of fiberglass door panels and reinforcement for the auto industry. It desires to employ the beneficiary as a production laborer for nine months. The director determined that the regulations did not allow the substitution of one beneficiary for another.

On appeal, counsel states that the decision is in error because the petitioner complied with all the regulatory requirements.

The record contains a copy of the Notice of Action, Form I-797C, showing the petitioner had filed a Petition for a Nonimmigrant Worker, Form I-129, on June 30, 2003. The notice states the names of 13 workers that the petitioner wanted to employ temporarily in the United States. The approval notice for these 13 workers is not contained in the record of proceeding. The petitioner is requesting the substitution of one worker, who was terminated, with the worker named in this petition. The petition indicates that the beneficiary named in this petition is currently in the United States, in B-1 or B-2 status.

The regulation at 8 C.F.R. § 214.2(h)(2)(i) states in pertinent part:

(E) *Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. . . .

The petitioner followed the proper procedure and filed Form I-129 to request a change of the beneficiary's status and extension of stay in the United States. Since the regulations do allow for a change of status as long as the beneficiary is maintaining her previously authorized nonimmigrant status in the United States, the director should have considered the petitioner's request. However, this petition may not be approved for other reasons.

The Petition for a Nonimmigrant Worker, Form I-129, was filed on September 18, 2003 without the current DOL determination, evidence to show that the need for the services to be performed is a peakload need and proof of the beneficiary's legal status in the United States. To remand this case to the director for further action and consideration would have no practical effect because the period of requested employment (September 1, 2003 until June 1, 2004) has passed. Therefore, the petition is denied.

ORDER: The petition is denied because the matter is moot due to the passage of time.