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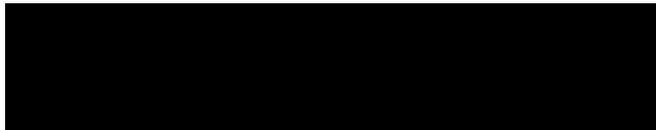
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 128 52382 Office: NEBRASKA SERVICE CENTER Date: MAR 16 2005

IN RE: Petitioner: [Redacted]
Beneficiaries: [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:
[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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a motel. It desires to extend its authorization to employ the beneficiaries as housekeepers for seven and one-half months. 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 appeal, counsel states that the petitioner submitted the original labor certification to the Nebraska Service Center (NSC) with the original I-129 petition.

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

(14) *Extension of visa petition validity.* The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. . . . A request for a petition extension may be filed only if the validity of the original petition has not expired.

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(C) provides that an extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification

The Petition for a Nonimmigrant Worker (Form I-129) was filed on March 29, 2004 without a temporary 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.

On appeal, counsel states that the NSC denied the petition because the petitioner had not submitted a labor certification. Counsel explains that the original labor certification was submitted with the original petition. The Notice of Action (Form I-797B) shows that the initial petition was valid from May 15, 2003 until March 15, 2004. The petitioner is presently requesting an extension of stay but has not submitted a valid, unexpired labor certification, or copy indicating that the labor certification is not expired. If the labor certification expired, the petitioner may not file an H-2B petition unless the United States petitioner has applied for a new labor certification with the Secretary of Labor. 8 C.F.R. § 214.2(h)(6)(iii)(C).

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.

This decision is without prejudice to the filing of a new petition accompanied by the proper documentation and fee.

ORDER: The appeal is dismissed.