

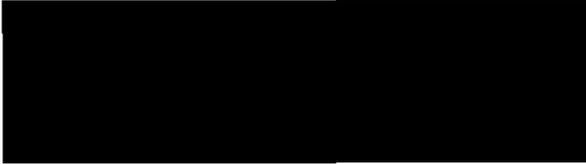
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



83

DATE: **SEP 07 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a vegetable farm established in 1989. In order to employ the beneficiaries in what it designates as farm worker positions from [REDACTED] 2012 until [REDACTED] 2012, the petitioner seeks to classify them as nonimmigrant workers coming temporarily to the United States to perform agricultural labor or services pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

The director denied the petition because the petitioner did not submit a valid temporary agricultural labor certification issued by the U.S. Department of Labor.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's decision denying the petition; and (3) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds an additional aspect which, although not addressed in the director's decision, nevertheless also precludes approval of the petition, namely, the petitioner's failure to sign and complete the Form I-129 in accordance with the form instructions.¹ For this additional reason also, the petition must also be denied.

Section 101(a)(15)(H)(ii)(a) of the Act defines an H-2A temporary worker as follows:

[An alien] having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. [§] 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature[.]

The regulation at 8 C.F.R. § 214.2(h)(5) states, in pertinent part, the following:

Petition for alien to perform temporary agricultural labor or services of a temporary or seasonal nature (H-2A) ---

¹ The AAO conducts appellate review on a de novo basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this additional basis for denial.

(i) *Filing a petition*

(A) *General.* An H-2A petition must be filed on Form I-129 with a single valid temporary agricultural labor certification. . . .

* * *

(D) *Evidence . . .* A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(A) of this section. . . .

As the petitioner did not submit a valid temporary agricultural labor certification when it filed the petition, the director properly denied it pursuant to 8 C.F.R. §§ 214.2(h)(5)(i)(A) and (D). On appeal, counsel submits a valid temporary agricultural labor certification certified prior to the date the petition was filed, and claims that the failure to file it with the petition “was a clerical error.” However, as noted above the regulation at 8 C.F.R. § 214.2(h)(5)(i)(D) stipulates that when an H-2A petition is filed without a valid temporary agricultural labor certification, it “shall be denied.” and counsel identifies no specific grant of discretionary authority to waive application of that regulation. Consequently, the petitioner’s failure to file a valid temporary agricultural labor certification with the petition mandates its denial.

Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Finally, with regard to the proper submission and adjudication of benefit requests to U.S. Citizenship and Immigration Services (USCIS), the regulation at 8 C.F.R. § 103.2(a) states, in pertinent part, the following:

Filing.

(1) *Preparation and submission.* Every benefit request or other document submitted to DHS must be executed in accordance with the form instructions, notwithstanding 8 [C.F.R. §] 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission. . . .

(2) *Signature.* An applicant or petitioner must sign his or her benefit request . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. . . .

As noted, 8 C.F.R. §§ 103.2(a)(1)-(2) require the petitioner to sign and complete the Form I-129 in accordance with the form instructions.² At page 2, the *Instructions* to the Form I-129 require the petitioner to complete the form and any relating supplement, and to answer all questions fully and accurately. However, the petitioner left blank the entire Form I-129, Supplement H. The

² The *Instructions* to the Form I-129 may be found online at the USCIS website at <http://www.uscis.gov/files/form/i-129instr.pdf> (last accessed July 16, 2012).

regulation at 8 C.F.R. § 214.2(h)(5)(vi)(A) et seq. requires the petitioner to make several attestations and agree to several conditions on H-2A employment, and the Form I-129, Supplement H is the vehicle by which those attestations and agreements are made. The petition cannot be approved absent such attestations and agreement to such conditions, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.