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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

[Redacted]

DATE: **AUG 02 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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

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:

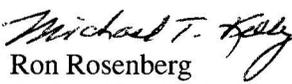
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for 
Ron Rosenberg
Acting 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 summarily dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as an agricultural livestock ranch.¹ In order to employ the beneficiary in a position it designates as a “Farmworker – Farm & Ranch Animals”² from December 30, 2012 until December 29, 2013, the petitioner seeks to classify him as a temporary nonagricultural worker 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 temporary labor certification (TLC) submitted by the petitioner was certified under another company’s Federal Employee Identification Number (FEIN). The petitioner’s agent filed a timely appeal.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

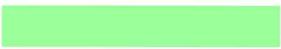
On appeal, the petitioner’s agent concedes that the TLC was certified under another company’s FEIN, apologizes for the error, claims that the petitioner had no intent to deceive U.S. Citizenship and Immigration Services (USCIS), and requests that the petition be approved. However, the agent fails to identify any specific, erroneous conclusion of law or statement of fact made by the director in her decision denying the petition. Consequently, the appeal must be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).³

¹ On the ETA Form 9142, Application for Temporary Employment Certification, the petitioner provided North American Industry Classification System (NAICS) Codes of 1121, “Cattle Ranching and Farming,” and 1124, “Sheep and Goat Farming.” U.S. Dep’t of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, “1121 Cattle Ranching and Farming,” “1124 Sheep and Goat Farming,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed May 31, 2013).

² The ETA Form 9142 submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 45-2093.00 and the associated Occupational Classification of “Shepherd – Farmworkers Farm and Ranch Animals.”

³ Even if the AAO were to adjudicate this case on its merits the petitioner’s appeal would still be dismissed, and the petition would be denied. The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) specifically requires the petitioner to submit a single, *valid* TLC with the Form I-129, and 8 C.F.R. § 214.2(h)(5)(i)(D) requires the director to deny the petition if the petitioner fails to do so. In this case, the evidence of record does not establish that the TLC submitted by the petitioner, which was certified for a business organization assigned an FEIN of [REDACTED] is in fact valid.

While the agent’s e-mail to the U.S. Department of Labor (DOL) is noted, the record contains no evidence indicating that DOL ever received this e-mail, let alone that DOL took such action that the TLC may now be considered “valid,” as mandated by 8 C.F.R. § 214.2(h)(5)(i)(A).



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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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