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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Mass Ave. NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: JUL 02 2013

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiaries: [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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a sheep ranching business and seeks to employ the beneficiary as a shepherd pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(a) from October 10, 2008 until October 9, 2009. The Department of Labor (DOL) determined that the petitioner had submitted sufficient evidence for the issuance of a temporary labor certification.

The director denied the petition, concluding that the petitioner did not submit evidence regarding the beneficiary's qualifications to perform the duties required of the shepherd as listed on the DOL Form ETA-750. The director noted that the temporary labor certification states that a worker must have 8 years of grade-school education, four years of high school education, 2 years of training in a machine shop, and 4 years of experience as a skilled mechanic.

On appeal, the petitioner explained that the Form ETA-750 did not require the qualifications listed in the director's decision.

Upon review of the Form ETA-750, the AAO agrees that the petitioner did not require the qualifications and training as discussed by the director in her decision. The temporary labor certification does not require a grade school or high school education, or training in a machine shop, or experience as a skilled mechanic. Instead, the temporary labor certification specifically requires training as a shepherd.

To determine whether a beneficiary is eligible for an employment-based nonimmigrant visa, U.S. Citizenship and Immigration Services (USCIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986).

In the initial submission, the petitioner provided a skeletal petition with no supporting documentation to establish that the beneficiary satisfied the requirements of the Form ETA-750. On appeal, the petitioner objects to the director's misinterpretation of the Form ETA-750 but again provides no evidence to establish that the beneficiary has the actual required training. Instead, the petitioner submits a letter to assert that the beneficiary has experience as a shepherd and possesses the necessary skills.

The submitted Form ETA-750, at Block 14, specifically requires "up to 3" months of training as a shepherd. While the beneficiary may be an experienced shepherd, the petitioner submitted no evidence to establish that the beneficiary possesses this required training.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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 reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act. Here, the petitioner has not met that burden. The AAO will dismiss the appeal.

It is noted that the petitioner requested the beneficiary's services from October 10, 2008 until October 9, 2009. Therefore, the period of requested employment has passed and the issues in this proceeding are moot.

ORDER: The appeal is dismissed.