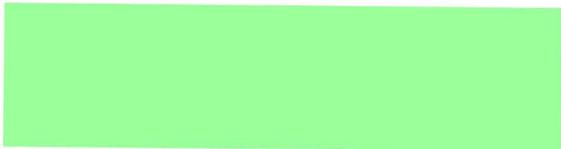


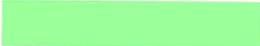
(b)(6)

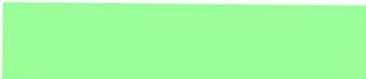
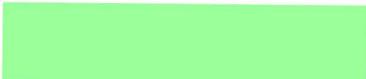
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **NOV 27 2013** 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:

SELF-REPRESENTED

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 Michael T. Kelly*  
Ron Rosenberg  
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 six-employee contractor<sup>1</sup> established in 1991. In order to employ the beneficiary in what it designates as a citrus hand harvester position<sup>2</sup> from June 1, 2013 until January 1, 2014, the petitioner seeks to classify him as a temporary agricultural 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 petitioner did not submit a valid temporary agricultural labor certification issued by the U.S. Department of Labor when it filed the petition.

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, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will 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)—*

<sup>1</sup> The petitioner provides a North American Industry Classification System (NAICS) Code of 115115, "Farm Labor Contractors and Crew Leaders." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "115115 Farm Labor Contractors and Crew Leaders," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Nov. 5, 2013).

<sup>2</sup> The ETA Form 9142, Application for Temporary Employment Certification, submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 45-2092.02 and the associated Occupational Classification of "Citrus Hand Harvesters."

- (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. . . .

Again, the petitioner stated on the Form I-129 that it wished to employ the beneficiary between June 1, 2013 and January 1, 2014. However, it did not submit a valid temporary agricultural labor certification when it filed the petition. Instead, it submitted a copy of a temporary agricultural labor certification certified for the period December 16, 2012 through June 1, 2013. As such, the director properly denied the petition pursuant to 8 C.F.R. §§ 214.2(h)(5)(i)(A) and (D).

On appeal, the petitioner states that the beneficiary sustained an injury to his back on January 3, 2013, and submits documentation relating to that injury. The petitioner also submits a copy of a temporary agricultural labor certification certified for the period February 15, 2013 to June 1, 2013.

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.” Consequently, the petitioner’s failure to file a valid temporary agricultural labor certification with the petition mandates its denial. Thus, even if the temporary agricultural labor certification submitted by the petitioner on appeal matched the dates of employment requested in the petition (again, June 1, 2013 to January 1, 2014), the petition could not be approved.

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 dismissed. The petition is denied.