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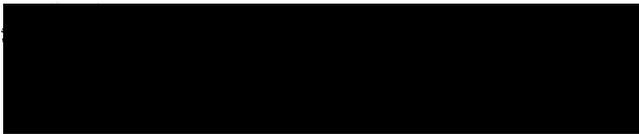
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FILE: EAC 03 263 53466 Office: VERMONT SERVICE CENTER Date: AUG 04 2005

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



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner operates a restaurant. It desires to employ the beneficiary as an assistant manager for an undetermined period. 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 petition was absent a labor certification, however the time frame given to cure the defect was an improbable one because of the tremendous backlog which exists at the DOL.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

*(B) Meaning of affected party.* For purposes of this section and §§103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding.

The regulation at 8 C.F.R. § 103.3(a)(2) states:

*(v) Improperly filed appeal-(A) Appeal filed by person or entity not entitled to file it-(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner or an affected party, but rather by the beneficiary's attorney. Therefore, the appeal must be rejected.

**ORDER:** The appeal is rejected.