

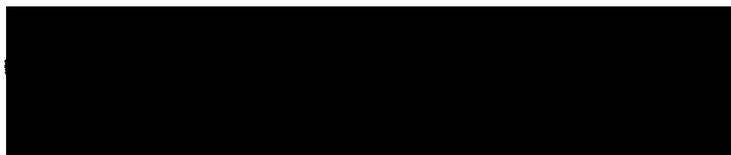
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DLH

FILE: EAC 05 067 51688 Office: VERMONT SERVICE CENTER Date: **MAY 25 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:

SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

In order to employ ten beneficiaries as cleaners for a period of nine months, the petitioner, a hotel and restaurant, endeavors to classify them as temporary nonagricultural workers 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).

The director denied the petition on the basis that the petitioner had failed to obtain a temporary labor certification from the Department of Labor (DOL), or a notice stating that such certification could not be made, prior to filing the H-2B petition.

The petitioner submitted a timely filed Form I-290B (Notice of Appeal) and cover letter on March 4, 2005. The petitioner conceded that it had filed the H-2B petition prior to obtaining the temporary labor certification. However, the petitioner requested that the petition be approved anyway, stating the following:

We would greatly appreciate it if you would be able to help us with this issue. I understand now that you are saying that the labor certification should have been filed with the I-129 petition. However, since it has been over looked [sic] in the pass [sic] and we have an approved labor certification, I would greatly appreciate it if you would review this case and grant the I-129 petition.

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 resubmits evidence already in the record, this time for the AAO's consideration. The petitioner fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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.