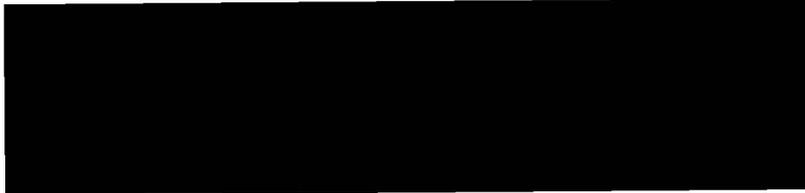


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04

FILE: SRC 06 125 51525 Office: TEXAS SERVICE CENTER Date: **MAY 09 2006**

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:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner engages in the business of growing and harvesting citrus fruits. It desires to employ the beneficiaries as fruit hauling truck drivers pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(a) for a period of four months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA 750, from the DOL, or notice stating that such certification could not be made when the petition was filed and denied the petition.

On appeal, the petitioner submitted the required temporary labor certification.

Upon careful review of the entire record of proceeding, the evidence of record does not support the director's decision to deny the petition. As discussed below, the AAO will withdraw the decision of the director and sustain this appeal.

The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) states in pertinent part:

An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

The petition was filed on March 14, 2006 without a temporary agricultural labor certification that had been certified by the DOL or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition could not be approved.

Upon review, the record of proceeding contains the temporary agricultural labor certification, Form ETA 750, from the DOL and the notice from the United States Department of Labor, Employment and Training Administration, dated March 9, 2006. The notice states that the certification was granted for 17 unnamed fruit haulers to transport citrus products from April 7, 2006 until July 31, 2006. Therefore, the certification was obtained prior to the filing of the Form I-129 and the petition can be approved.

In summation, the petitioner has submitted sufficient countervailing evidence to show that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the need for fruit haulers is seasonal and temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.