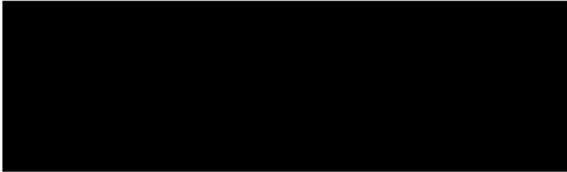


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D4

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 29 2010

IN RE: Petitioner:
Beneficiary:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a horse ranch that seeks to employ the beneficiaries as farm workers pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(a) for the period from March 25, 2010 to December 20, 2010.

The director denied the petition because the petitioner did not submit the required initial evidence and supporting documentation with the Form I-129.

The petitioner electronically filed Form I-129 on March 18, 2010. The United States Citizenship and Immigration Services' (USCIS) instruction on electronically filing Form I-129 states that the required initial evidence must be received by the Service Center within seven business days of e-filing the form. In addition, the instructions state that if the petitioner does not submit the required initial evidence in the requisite time period, it will not establish a basis for eligibility, and the petition may be denied.

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

General. An H-2A petition must be filed on Form I-129 with a single valid temporary agricultural labor certification. The petition may be filed by either the employer listed on the temporary labor certification, the employer's agent, or the association of United States agricultural producers named as a joint employer on the temporary labor certification.

In addition, the regulation at 8 C.F.R. § 214.2(h)(5)(i)(D) states:

Evidence. An H-2A petitioner must show that the proposed employment qualifies as a basis for H-2A status, and that any named beneficiary qualifies for that employment. A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(A) of this section and, for each named beneficiary, the initial evidence required in paragraph (h)(5)(v) of this section.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on March 18, 2010 without a certified temporary labor certification or supporting documentation. On appeal, the petitioner submits the certified labor certification. The petitioner also submits the passport identification page for [REDACTED] and two visas issued to [REDACTED]. The petitioner also submits a letter stating that the beneficiaries "all had over 3 years experience doing this job at other ranches previously and were recommended by past employers." The petitioner also lists the past employers and two petition file numbers. The AAO will accept the certified labor certification. However, the petitioner did not submit documentation or evidence that the beneficiaries have the required 3 years experience as a farm worker. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petitioner did not establish a temporary need for the beneficiaries' services. On the Form I-129, the petitioner stated that it has a seasonal need that is recurrent annually. On the Form I-129, the petitioner stated the temporary need is "due to the increase demand for breeding services and increase in number of horses on the ranch the need for more labor to clean stalls, feed and perform tasks related to horse breeding and hay crop increases seasonally."

The regulation at 8 C.F.R. § 214.2(h)(5)(iv)(A) states:

Eligibility Requirements. An H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

In this instance, aside from the statement made on the Form I-129, the petitioner did not submit any evidence to support the petitioner's claim that it has a temporary need for additional farm workers. The petitioner has not documented the increase in need through data on its annual historical need for additional supplemental labor, its usual workload and staffing needs, and the special needs created by the current situation or contracts. As noted above, the petitioner failed to provide information about its need for temporary and permanent employees for the position of farm workers, and therefore it is impossible to determine if the petitioner has a seasonal need. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.