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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

APR 2 3 2001

File: WAC 00 263 54235 Office: California Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiaries:

Petition: Petition for 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)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a sheep ranch. It desires to employ the beneficiaries as sheepherders for one year. The director determined that the petitioner did not file a Petition for a Nonimmigrant Worker (Form I-129) with a single valid temporary agricultural labor certification, Application for Alien Employment Certification (Form ETA 750). The director also determined that no evidence was submitted to substantiate the beneficiaries would be employed in accordance with the terms and conditions of the temporary agricultural labor certification.

On appeal, the petitioner submitted a copy of one petition filed for two unnamed workers, a copy of one petition filed for three unnamed workers, and a copy of a petition filed for [redacted], as sheepherders for one year.

The regulation at 8 C.F.R. 214.2(h)(5)(i) states:

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

The H-2A petition was filed on September 13, 2000 by [redacted] Association for six unnamed workers. The petitioner, [redacted] Association, is not the employer or named as a joint employer on the temporary agricultural labor certifications submitted with the petition. The petitioner filed the petition with three separate Forms ETA 750's.

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

> ...a single petition can include more than one beneficiary if the total number does not exceed the number of positions indicated on the relating certification, and all the beneficiaries will obtain a visa at the same consulate or are not required to have a visa and will apply for admission at the same port of entry.

Since the petitioner did not submit a single valid temporary agricultural labor certification indicating the six positions on the relating petition, the petition cannot be approved.

Further, the petitioner has not presented evidence that any of the six unnamed beneficiaries qualify for such employment.

On appeal, the petitioner submitted copies of the petitions filed for unnamed and named beneficiaries. However, neither the statute nor the regulations allows for consideration of these petitions during this proceeding.

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 not met that burden.

ORDER: The appeal is dismissed.