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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**

File: SRC 00 267 53116 Office: Texas Service Center Date: JUL 30 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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

Mary L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner, an agricultural business, desires to employ the beneficiary as an agricultural worker for an indefinite period. The petition was not accompanied by the required temporary agricultural labor certification, ETA-750. The director determined that absent the certification, the petitioner failed to meet the regulatory requirements necessary for approval of the petition.

The petitioner states that this appeal is due to his mistake and need for a good worker on his farm.

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

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

The regulation at 8 C.F.R. 214.2(h)(5)(i)(D) states in pertinent part that a H-2A petition:

> will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(A) of this section....

The petition was filed on September 11, 2000 without a temporary agricultural labor certification. Absent such documentation, the petition cannot be approved.

This petition cannot be approved for an additional reason. The petition does not indicate the dates of the intended employment. The petition states that the dates of the intended employment are from "ASAP". The petition does not indicate the date the employment will terminate. The petitioner has not established that the need for the services to be performed is 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 not met that burden.

ORDER: The appeal is dismissed.