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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

APR 01 2003

File: SRC 00 119 53361 Office: Texas Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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)

PUBLIC COPY

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:
This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an association of growers. It desires to extend its authorization to employ the beneficiary as a farm worker for a period of five months. 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.

On appeal, the petitioner states that the beneficiary is eligible for the extension of stay. The petitioner attaches a copy of the relating initial and subsequent ETA-750s as evidence of its eligibility to employ the beneficiary.

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(C) states in pertinent part:

> *H-2A or H-2B extension of stay.* An extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section.

This petition extension was filed on March 10, 2000. The petitioner contends that the ETA-750 that it filed in conjunction with another petition, SRC-00-104-50824, is still valid as only 250 to 300 nonimmigrant workers were approved and admitted out of the 749 unnamed nonimmigrant workers on the petition. Therefore, the petitioner states that additional workers could be petitioned for using the same ETA-750. The validity of this ETA-750 is from March 2, 2000 through July 31, 2000.

The director denied the petition extension stating that an ETA-750 that has been certified for initial entry cannot be used in conjunction with a petition filed for an extension, and therefore, the petitioner must apply for a temporary alien agricultural labor certification specifically issued as an extension.

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

> *Validity.* An approved H-2A petition is valid through the expiration of the relating certification for the purposes of allowing a beneficiary to seek issuance of an H-2A nonimmigrant visa, admission or an extension of stay for the purpose of engaging in the specific certified employment.

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

> The total number of beneficiaries of a petition or series of petitions based on the same certification may not exceed the number of workers indicated on that document.

The temporary agricultural labor certification was still valid at the time of the petition's filing. Therefore, the director's objections are found to be misleading. However, the petitioner has not established that only 250 to 300 nonimmigrant workers were admitted based on the temporary labor certification that accompanied the petition associated with the receipt number SRC-00-104-50824. Therefore, the petitioner has not established that the beneficiary could have used this same temporary agricultural labor certification to obtain an extension of stay. Accordingly, the director's decision will not be disturbed.

This petition cannot be approved for another reason. The regulation at 8 C.F.R. § 214.2(h)(14) states in pertinent part:

> *Extension of visa petition validity.*
> The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act...A request for a petition extension may be filed only if the validity of the original petition has not expired.

The petition was filed on March 10, 2000. The validity of the original petition expired on March 1, 2000. As the validity of the original petition had expired prior to the request for a petition extension, the petition may not be approved.

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.