U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: LIN 00 076 50310 Office: Nebraska Service Center Date: FEB 6 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

PUBLIC COPY

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.

identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John F. Grissom

John C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska 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 beneficiary as a sheepherder foreman for five years. 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 when this documentation was originally provided there were valid documents already in the system.

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 January 14, 2000 without a temporary agricultural labor certification. Absent such documentation, the petition cannot be approved.

This petition cannot be approved for another reason. The petition indicates that the dates of the intended employment for the beneficiary are from January 25, 2000 to January 25, 2005. The petition also states that the beneficiary needs an extension through August 2000 because the beneficiary has applied for resident alien status. 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.