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FILE: WAC 08 167 51445 Office: CALIFORNIA SERVICE CENTER Date: **AUG 28 2008**

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, California Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be affirmed and the petition will be approved.

The petitioner engages in the training and racing of thoroughbred horses. It desires to employ the beneficiaries as exercise riders from May 24, 2008 to October 7, 2008 at Yavapai Downs, Prescott Valley, Arizona. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the Application for Alien Employment Certification (Form ETA 750), in Item 6, bears the address of the agent and not the employer's business address. According to the DOL, the documentation provided by the employer does not justify the agent's address being listed as the employer's address in Item 6 of the Form ETA 750.

In its request for information (RFI) dated May 1, 2008, the DOL states that the employer did not correctly complete Item 6 (address of employer) on the Form ETA 750. The DOL explains that the actual address of the employer must be entered, not that of its agent in accordance with TEGL 21-06, Change 1, Attachment A, Section III.A. The DOL requested that the employer submit a corrected Form ETA 750.

In response to the RFI, the employer's agent states that he is the employer's accountant and tax preparer. The employer's agent also submitted evidence to show the DOL that his address has been and continues to be the employer's business address. The DOL determined that since the Form ETA 750 was returned without being amended as required in the RFI letter, it was unable to render a positive determination. The petitioner then filed the current petition containing countervailing evidence to overcome the DOL's decision.

The director determined that sufficient countervailing evidence has been submitted to overcome the concerns of the DOL. The director also determined that the evidence presented by the petitioner showed that qualified persons in the United States are not available, that the employment policies of the Department of Labor have been observed and that the need for the services to be performed is temporary. The director's decision recommending the approval of the petition is now before the AAO for review.

Upon review, the AAO finds that the decision of the director is correct. The documentary evidence (2007 U.S. Income Tax Return for an S Corporation, FY07-08 Annual Report, 2008 Quarterly Unemployment Tax and Wage Report, Form 941 for 2008: Employer's Quarterly Federal Tax Return, etc.) contained in the record establishes the petitioner's place of business as 851 East Friess Drive, Phoenix, Arizona, which is the same address listed on the petition and the Form ETA 750. The petitioner disclosed the work location as Yavapai Downs, Prescott Valley, Arizona, prior to the test of the United States labor market. Moreover, the petitioner has established that the need for the beneficiaries' services is seasonal and temporary. The California Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved.