



U.S. Citizenship
and Immigration
Services



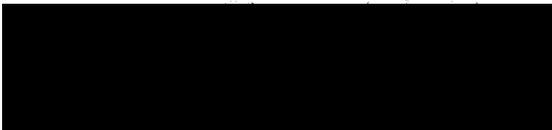
FILE: WAC 04 014 52586 Office: CALIFORNIA SERVICE CENTER Date: **OCT 27 2004**

IN RE: Petitioner: 
Beneficiary: 

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

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

The petitioner operates a competitive training facility for horses. It desires to employ the beneficiary as a horse show groom for one year. The director determined that the petitioner had not submitted a temporary labor certification (Form ETA 750) from the Department of Labor (DOL) or notice stating that such certification could not be made and denied the petition.

On appeal, counsel states that there has been no Form ETA 750 filed and even if it had been, it would take approximately two years to process.

The regulations stipulate that an H-2B petition for temporary employment in the United States shall be accompanied by a labor certification determination that is either: (1) a certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(iv)(A).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on October 21, 2003 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

Counsel asserts that there should be an exemption from providing a labor certification under section (2) above. Neither the statute nor regulations provide an exemption of the labor certification requirement. Further, a temporary labor certification determination is to be overridden only upon presentation by a petitioner of countervailing evidence that serves to demonstrate the error or inapplicability of such determination. 8 C.F.R. 214.2(h)(6)(iv)(D).

Counsel also states on appeal that the employer will be filling the Form ETA 750 on behalf of the beneficiary. Neither the statute nor regulations allow for the acceptance of a labor certification obtained subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

This petition cannot be approved for an additional reason. As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. § 214.2(h)(6)(ii)(B). The petition indicates that the employment is seasonal and recurs annually.

The dates of the intended employment for the beneficiary are from November 5, 2003 until November 5, 2004. The petitioner has not shown which competitions it will be attending to justify the need for the

beneficiary's services for one year. Absent such evidence, the petitioner has not shown that the need for the beneficiary's services is seasonal and temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.