



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



D2

FILE: WAC 08 082 52235 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2008

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [REDACTED]

PETITION: Petition for a 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)

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.

*for Michael T. Kelley*  
Robert P. Wiemann, Chi  
Administrative Appeals Office

**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 sustained and the petition will be approved.

The petitioner operates a thoroughbred horse farm in Lexington, Kentucky that specializes in the breeding of thoroughbred horses. It desires to employ the beneficiaries as stable attendants pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(a) from February 15, 2008 to November 30, 2008.

The petitioner submitted a temporary agricultural labor certification, Form ETA 750, approved by the Department of Labor (DOL). The director determined that the petitioner did not qualify as an agricultural employer and therefore is ineligible to file for the beneficiaries as H-2A workers.

On appeal, the petitioner indicates through its representative that the workers main priority is to take care of the thoroughbred mares and foals. The petitioner also states through its representative that employees engaged in the breeding, raising, and training of horses on farms are employed in agriculture whether or not the horses are being bred for racing or commercial sport. The AAO agrees.

Upon careful review of the entire record of proceeding, the AAO does not agree with the director's decision to deny the petition. The petitioner is found to be a horse farm that engages in the daily care of thoroughbred mares and foals by grooming, feeding, cleaning stalls and helping with delivery of mares, especially, looking after sick newborn foals. As discussed below, the AAO will sustain the appeal.

“Agricultural labor” includes all services performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife. 20 C.F. R. § 655.100(c)(1)(i)(1).

The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities or orchards. 20 C.F.R. § 655.100(c)(1)(i)(5). As the term “livestock” is not defined in the pertinent regulations, the AAO will here accept the common usage of the term, as including horses raised on a ranch.

The Petition for a Nonimmigrant Worker (Form I-129) has been filed for H-2A classification as stable attendants. As specified on the Application for Alien Employment Certification (Form ETA 750), the beneficiaries will be responsible for the daily care of thoroughbred mares and foals by grooming, feeding, cleaning stalls, and helping with delivery of mares, especially, looking after sick newborn foals.

In her decision, the director determined that, as the petitioner raises its horses for sports purposes, it is not an agricultural employer engaged in raising, growing and the cultivation of agricultural products for consumption. On this basis, the director concluded that the petitioner does not qualify as an agricultural employer and is not eligible to file for the beneficiaries as H-2A workers.

The term *H-2A worker* means any nonimmigrant alien admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 101(a)(15)(H)(ii)(a) of the Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a). In the current petition, the petitioner has established that it is a “farm” as defined by regulations, specializing primarily in the breeding, weaning, foaling and raising of thoroughbred horses – which

the AAO here finds to be a type of livestock. The petitioner has also established that the work being performed by the beneficiaries falls within the definition of “agricultural labor.” 20 C.F.R. § 655.100(c)(1)(i)(1).

Further, the regulations do not restrict “agricultural labor” to the raising, growing and cultivation of agricultural products for consumption. Although thoroughbred horse breeding can include the sale of horses for sports purposes, the regulations do not exclude the petitioner’s operation from being classified as a “farm” and eligible to file for the services of H-2A workers.

In addition, employees engaged in the breeding, raising, and training of horses on farms for racing purposes are considered agricultural employees. Included are such employees as grooms, attendants, exercise boys, and watchmen employed at the breeding or training farm. 29 C.F.R § 780.122.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.