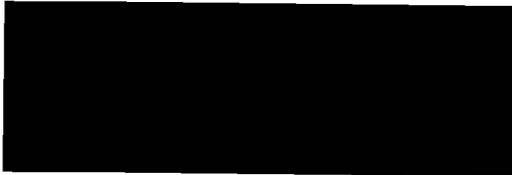


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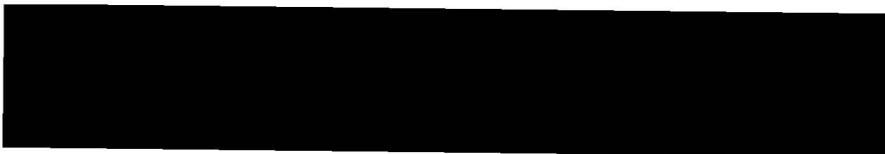
FILE: WAC 08 069 50567 Office: CALIFORNIA SERVICE CENTER Date: **APR 10 2008**

IN RE: Petitioner:  
Beneficiaries:



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:



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.

*Michael P. Kelly*  
for Robert P. Wiemann, Chief  
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 Georgetown, 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 1, 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 ineligible to file for the beneficiaries as H-2A workers.

On appeal, counsel states that the petitioner is an agricultural operation that focuses primarily on the breeding, weaning, foaling and raising of thoroughbred horses. As such, counsel states that the stable attendants duties are in keeping with the definition of agricultural labor found in 20 C.F.R. § 655.100(c)(1)(i)(1). 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 raising, feeding, caring for, training and management of livestock. 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 a stable attendant. As specified on the Application for Alien Employment Certification (Form ETA 750), the beneficiaries will be responsible for caring for the horses to protect their health and improving their appearance during the employer's foaling and weaning season. The beneficiaries will also be responsible for watering the animals, measuring mix and apportioning feed and feed supplements according to the feeding instructions during the aforementioned season.

In its decision, the director states that the petitioner is a horse breeder for sales and sports. The director also states that the petitioner is not an agricultural employer engaged in the raising, growing and cultivation of agricultural products for consumption but rather for sports purposes. Therefore, the director states that the petitioner does not qualify as an agricultural employer and is not eligible to file for the beneficiaries as H-2A workers. The director does not cite a regulatory or statutory basis for drawing a material distinction for H-2A purposes between livestock raised for consumption and livestock raised for sports purposes.

Counsel explains in her brief that the petitioner's operation deals primarily with the breeding of thoroughbred horses for consignment and sale during the Kentucky thoroughbred breeding season which begins on February 1,

2008 and concludes on November 30, 2008. Counsel states that the petitioner's temporary period of need is based on its annual foaling and weaning season as indicated on its Form ETA 750. Counsel explains that the season annually coincides with the traditional Central Kentucky thoroughbred season which encapsulates the thoroughbred horse industry's breeding, sales, racing and training period. Counsel emphasizes that the petitioner's specific operation is the foaling and weaning operations of thoroughbred breeding. Counsel explains that the stable attendants do not participate in off-site job duties and remain on-site in the barn and on the grounds where they assist with the breeding, foaling, and weaning activities and assist with the grooming, maintenance and feeding of the horses during these activities.

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.

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.