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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: SRC 02 195 53306 Office: Texas Service Center

Date:

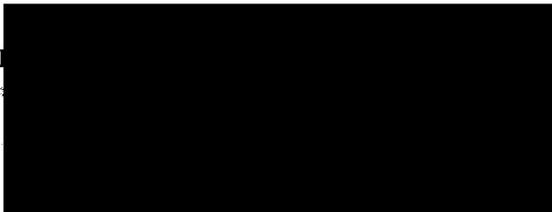
**DEC 16 2002**

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)

IN BEHALF OF PETITIONER



**INSTRUCTIONS:**

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner engages in the business of equestrian training. It desires to extend its authorization to employ the beneficiary as a training instructor for ten months. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that the petitioner had not established that the position being offered is temporary.

On certification, counsel states that the petitioner requested an extension of the H-2B classification for an individual to teach other individuals the discipline of dressage. Counsel also states that there are no facts of record which support the conclusion of the notice of certification.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii), defines an H-2B temporary worker as:

an alien...having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), codified in current regulations at 8 C.F.R. 214.2(h)(6)(ii), specified that the test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. See 55 Fed. Reg. 2616 (1990).

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 a one-time occurrence and the temporary need is unpredictable.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Will be responsible for establishing training program for the teaching of dressage. Will instruct trainees in the elements of dressage techniques. Will demonstrate dressage theory and practice for the training program by teaching instructors to train people and horses for the dressage show rink and to arrive at a 100% domestic work force.

The director determined in his decision that the evidence submitted did not establish the position is temporary. However, it is the petitioner's need for the services which is controlling. Therefore, it must be shown that the petitioner's need for the beneficiary's services is temporary.

The beneficiary has been employed by the petitioner as a training instructor teaching dressage techniques from January 17, 2002 until March 1, 2002. The petitioner states in his letter dated June 3, 2002 that "...With two persons currently in the program we have found that due to the extreme complexity of dressage the time taken for the trainees to achieve a competent level of understanding of even the lower levels of dressage is much longer than we could have anticipated...With this in mind we respectfully ask that you grant an extension to Ms. Broertjes...." Therefore, the petitioner has not shown the need for the beneficiary's services to be a temporary event of short duration.

Further, the petitioner states that "its goal is to produce a staff of U.S. citizens competent to teach the dressage method of horsemanship." The petitioner has not shown that it will not need a worker to perform the services or labor in the future. Consequently, the petitioner has not established that the nature of its need for a training instructor is temporary in nature.

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 decision of the director is affirmed. The petition is denied.