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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, DC 20536



FILE: SRC 02 254 51219 Office: Texas Service Center

Date: JAN 08 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



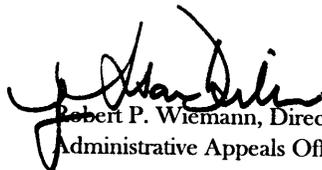
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and certified to the Administrative Appeals Office (AAO) for review. The AAO withdrew the director's decision and remanded the matter for further consideration. The director again denied the petition and again certified the decision to the AAO for review. The decision of the director will be affirmed.

The petitioner operates a thoroughbred horse ranch. It desires to employ the beneficiaries as thoroughbred race horse grooms for nine months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made. The DOL's certifying officer's opinion stated that he was unable to make a determination that a sufficient supply of qualified U.S. workers was not available for the job opportunities. The director determined that the evidence submitted did not establish that the petitioner had advertised the job opportunities, and as a result, concurred with the DOL.

On certification, the petitioner submitted countervailing evidence to overcome the objections of the DOL. However, the petition could not be approved for another reason. Therefore, the AAO withdrew the director's decision and remanded the case to the director for further action.

A new decision has now been rendered by the director, and certified to the AAO for review. In her most recent decision, the director decided that the petitioner has not established that its need for the services or labor to be performed is temporary.

On notice of certification, neither counsel nor the petitioner presents any additional evidence.

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), 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 . . . .

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. *Matter of Artee Corp.*, 18 I&N Dec. 366 (Comm. 1982).

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 seasonal need.

The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(2) states that for the nature of the petitioner's need to be seasonal, the petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

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

Cares for thoroughbred race horses to protect their health and improve their appearance. Waters horses and measures, mixes and apportions feed and feed supplements. Washes, brushes, trims, bandages, pick hooves and curries horses' coats to clean and improve their appearance. Inspects animals for disease, illness, and injury and treats animals according to instructions. Cleans horses' quarters and replenishes bedding. Handles and exercises horses as necessary. Unloads and stores feed and supplies. May whitewash stables, using brush. May clean saddles and bridles. Saddle animals. Maintains barn area in a neat orderly condition.

Upon review, the duties are shown to be ongoing. The petitioner has a permanent need for workers to care for its thoroughbred race horses, which is the specific nature of the petitioner's business. The services to be rendered cannot be classified as seasonal work as they are not traditionally tied to a season of the year by an event or pattern. Consequently, the petitioner has not established that its need for thoroughbred race horse grooms is seasonal and temporary.

**ORDER:** The decision of the director is affirmed.  
The petition is denied.