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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: LIN 03 147 51121 Office: NEBRASKA SERVICE CENTER Date: FEB 13 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner operates a horse ranch. It desires to employ the beneficiary as a horse trainer for eight months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner had not submitted a temporary agricultural labor certification, Form ETA750, from the DOL when filing the petition. The director also determined that the duties of a horse trainer do not meet the definition of an H-2A nonimmigrant because the duties do not constitute agricultural labor or services of a temporary or seasonal nature.

On appeal, the petitioner submitted evidence of the temporary agricultural labor certification and clarified the job duties of the horse trainer position.

The regulation at 8 C.F.R. § 214.2(h)(5)(i)(A) states in pertinent part:

> An H-2A petition must be filed on Form I-129. The petition must be filed with a single valid temporary agricultural labor certification.

Upon review, the record does not support the director's decision. The petition was filed on April 17, 2003. The record contains a temporary agricultural labor certification, dated March 13, 2003, valid from March 29, 2003 through November 30, 2003.

The director also states in his decision that the duties of a horse trainer do not meet the definition of an H-2A nonimmigrant. However, an 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(a). 20 C.F.R. § 655.100(b). The term "agricultural labor" includes all service performed on a farm, in the employ of any person, in connection with raising, shearing, feeding, caring for, training, and management of livestock. The term "farm" includes ranches. 20 C.F.R. § 655.100(c)(1)(i). Therefore, a horse trainer can be considered agricultural labor as it involves working with livestock (horses) on a ranch.

The regulation at 8 C.F.R. § 214.2(h)(5)(iv) states in pertinent part:

> (B) Effect of Department of Labor findings. In temporary agricultural labor certification proceedings the Department of Labor separately tests whether employment qualifies as temporary or seasonal. Its finding that employment qualifies is normally sufficient for the purpose of an H-2A petition.

The record contains evidence of the beneficiary having been previously approved for H-2A classification. Further, the petitioner's need has been shown to be seasonal and for a temporary period.

The regulation at 8 C.F.R. § 214.2(h)(9)(ii)(B) states that if a petition is approved after the date the petitioner indicates that the service will begin, the approved petition and approval notice should show a validity period commencing with the date of approval and ending with the date requested by the petitioner.

The petition should have been approved for the requested time period. To sustain this appeal would have no practical effect because the period of requested employment has now elapsed. Therefore, the issues in this proceeding are moot.

ORDER: The appeal is dismissed.