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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 008 50614 Office: NEBRASKA SERVICE CENTER Date: JAN 05 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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 certified to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner engages in horse breeding and training. It desires to employ the beneficiary as a trainer's assistant for one year. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made because the petitioner's job offer requirements were unduly restrictive. The director determined that sufficient countervailing evidence had been submitted to establish that the employment policies of the DOL had been observed. The petition was approved by the director on February 4, 2004 and certified to the AAO for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii).

On February 6, 2004, the AAO concurred with the director decision, however, the petition could not be approved for another reason. The AAO determined that the petitioner had not established that its need to supplement its permanent staff of six employees on a temporary basis is due to a peakload demand. The AAO withdrew the director's decision and remanded the case to the director for reconsideration and action. The director has now denied the petition and certified his decision to the AAO for review.

After review of the evidence contained in the record, the decision of the director is found to be correct. The petitioner was given the opportunity to present additional evidence in rebuttal to the AAO's concerns. The petitioner provided the ads she had run for the position. The ads were for the position of ranch foreman and did not indicate that the position was temporary. The petitioner also explains in her letter, dated May 24, 2004, that she cannot find anyone like the beneficiary and needs her desperately due to her own physical limitations. The petitioner explains that she has tried and tried but everywhere she goes to try to find someone, there are two large issues. The petitioner states that the first issue is the utter lack of talent and ability of the people she has talked to and the other is the location of her ranch. If the petitioner is experiencing a severe labor shortage, it can be alleviated through the issuance of an immigrant visa. Consequently, the evidence provided by the petitioner did not establish that the need for the beneficiary's services is peakload and temporary.

ORDER: The decision of the director, dated June 22, 2004, is affirmed. The nonimmigrant visa petition is denied.