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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

44

[Redacted]

DATE: **JAN 06 2012** OFFICE: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiaries: [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:  
[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in the training and racing of thoroughbred horses. It seeks to employ the beneficiaries as horse grooms pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from April 1, 2011 until December 1, 2011.

On September 12, 2011, the director denied the petition concluding that the petitioner did not establish a temporary need for the beneficiary's services. On October 11, 2011, the petitioner submitted the Form I-290B to appeal the denial of the petition. The petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. The AAO never received a brief and/or additional evidence in support of the appeal. Thus, the record is complete as currently constituted.

On the Form I-290B, counsel for the petitioner states the following:

The Service applied an incorrect interpretation of the term temporary in denying the present petition. The petitioner does not have a year round need for H-2B workers in the requested location of need. The petition should have been approved.

As noted by the director in the denial decision, the evidence submitted with the petition indicated that the petitioner employs temporary horse grooms every month of the year. The director also noted that there is no evidence of a drop in the number of horse grooms required from January through March, the months that the petitioner did not request for peakload employment.

The petitioner did not submit sufficient evidence to establish it has a peakload need for temporary horse grooms. On appeal, the petitioner did not submit any evidence to overcome the director's concerns.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In regards to the director's conclusion that the petitioner failed to submit sufficient evidence to show the petitioner's need for the services or labor is a peakload need, counsel for the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is summarily dismissed.