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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 18 2003

FILE: WAC 01 198 55762 Office: California Service Center Date:

IN RE: Petitioner:
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: [redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in professional horse show competitions. It desires to employ the beneficiary as a horse show groom for seven months. The petition was not accompanied by the required temporary labor certification, ETA-750. The director determined that, absent the certification, the petitioner failed to meet the regulatory requirements necessary for approval of the petition.

On appeal, counsel states that the petitioner did submit evidence of the Department of Labor's certified temporary labor certification. Counsel also states that a copy of the temporary labor certification has been submitted with the appeal.

The regulation at 8 C.F.R. § 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made.

The petition was filed on May 1, 2001 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. The regulation requires that, prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner must apply for a temporary labor certificate with the Secretary of Labor for all areas in the United States, except the Territory of Guam. 8 C.F.R. § 214.2(h)(6)(iii)(A). Absent such certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, counsel for the petitioner states that the temporary labor certification was submitted with the petition and a copy of the temporary labor certification has been submitted with the appeal. However, counsel only submitted the final determination notice without the temporary labor certification, ETA-750. Further, the final notice states that the employer is Beverly Hills Equestrian Park, C.P.H.A. Absent the ETA-750, it cannot be ascertained if the final determination notice submitted relates to the petitioner, the California Professional Horseman's Association located at Woodland Hills, CA.

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 appeal is dismissed.