

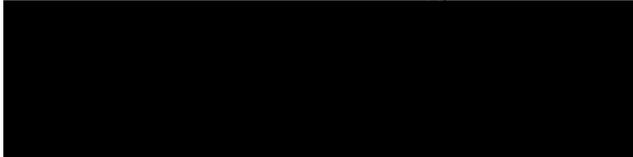


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 99 248 53787 Office: California Service Center

Date: AUG 3 2000

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

Public Copy

IN BEHALF OF PETITIONER



data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of housewares, hardware and stationery products. It seeks classification of the beneficiary as a purchasing agent trainee for a period of one year and eight months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner does not have the physical premises and enough sufficiently trained manpower to provide the training specified. The director decided that the petitioner has not demonstrated that the proposed training is not available in the beneficiary's own country. The director also decided that the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. Finally, the director decided that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, counsel states that the petitioner has the physical plant and sufficient trained manpower to provide the training specified, the proposed training is not available in the alien's home country, Taiwan, and the beneficiary will not engage in productive employment.

Section 101(a) (15) (H) (iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a) (15) (H) (iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h) (7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--(A) Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

Counsel states that the beneficiary's training is primarily on-the-job training and no productive labor will be involved. Counsel states that the beneficiary will be merely observing the production process and will not be permitted to participate in or contribute to the work of [REDACTED] employees. Counsel asserts that the beneficiary's on-the-job training is limited to on-site observation and continual supervision. Therefore, the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training. Further, the petitioner demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. The training program establishes that the beneficiary would not engage in any negotiations or purchasing of any material for the petitioner.

The training program encompasses all phases of the employer's operations in the United States. The petitioner will then be able to employ its own purchasing agent in the country where it purchases the materials. Therefore, the training is not available in the beneficiary's home country, Taiwan.

The record shows that the petitioner has the physical plant and sufficient trained manpower to provide the training specified. The corporation's headquarters is a 250,000 square foot facility consisting of office space and a plant facility with over 300 employees. The record does indicate who will be responsible for the beneficiary's training.

The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The petitioner's training program consists of on-the-job training with the beneficiary spending 28 weeks in the Purchasing Department and the remaining 50 weeks divided evenly among five other departments, to wit, Customer Service, Financing, Research and Development, Quality Control and Production Departments. The petitioner states that the training is designed to educate the beneficiary on how the products are and will be manufactured in the future, the operations of the business and the competitive business markets in the United States. No structured training program has been set forth showing

the number of hours that will be spent on each activity or procedure associated with the on-the-job training, the type of supervision to be given, objectives to be reached, or the means by which the instructor(s) will be evaluating the trainee.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.