

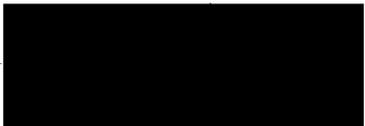


U.S. Department of Justice

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: LIN 99 213 52281 Office: Nebraska Service Center

Date:

AUG 10 2000

IN RE: Petitioner:  
Beneficiary



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: Self-represented

Identifying 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an RV dealership and sales service center. It seeks classification of the beneficiary as an administrative and secretarial support trainee for a period of approximately nine months in order to set up and manage an RV dealership in Belgium jointly owned by the petitioner. The director determined that the evidence submitted does not establish that the petitioner has a valid and organized training program. The director also determined that the petitioner does not have enough sufficiently trained manpower to provide the training specified. The director decided that the beneficiary already possessed substantial training and expertise in the proposed field of training. The director also decided that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, the petitioner states that the beneficiary already possesses the required academic background, training and experience as a secretary but needs training in the specific RV industry/dealer administrative systems and applications.

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.

The petitioner's training program requires nine months for completion. The petitioner wishes to provide the beneficiary an opportunity to learn the administrative/secretarial tasks in an RV dealership and service center. The beneficiary's training will cover reception and telephone, sales service and spare parts administration, guarantee work follow up, design of advertising materials, custom tailored RV software, management reporting and accounting and visiting fairs-reception of potential customers. The petitioner has not specified the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee. The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation.

The record indicates that the beneficiary has an undergraduate degree in business and commerce, as well as a graduate degree in teaching and languages. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training.

The petitioner states that the training program will be personally supervised by him. The petitioner has not explained how he will be solely responsible for the beneficiary's overall supervision and still be able to perform his duties as president. Moreover, the petitioner states only that the training will be given by current employees. The petitioner has not established that it has enough sufficiently trained manpower to provide the training specified.

The training program consisting of eight hours of on-the-job training, with the training being 40%-50% productive time, on a daily basis. There will be no class-room instruction. The petitioner states that the beneficiary will be assisting regular employees in all administrative and secretarial aspects of the RV business. The petitioner also states that the beneficiary will be remunerated at an hourly rate of \$7 per hour. The petitioner has not shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training.

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.