



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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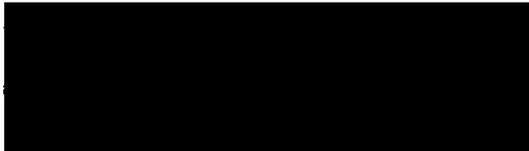
File: WAC 00 030 52241 Office: California Service Center

Date: SEP 14 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)

IN BEHALF OF PETITIONER:



Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Frances 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 an international travel agency. It seeks classification of the beneficiary as a trainee for a period of 24 months. The director determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. 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 submitted additional evidence to show that the type of training offered is not available in the beneficiary's native country. Further, counsel states that much of the training involves a hands-on approach where the trainee actually uses equipment, experiments with models, and physically performs tasks which are not necessarily 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.

The petitioner's training program requires 24 months for completion. The petitioner wishes to provide the beneficiary with knowledge of the travel industry, specifically with regard to the petitioner's operations.

The record indicates that the beneficiary possesses skills in the travel and tourism industry having completed an Associate of Arts educational program. He is a graduate of [REDACTED] where he earned an Associate Degree in Applied Science in travel and hospitality management. In addition, the beneficiary has some background in the travel industry having worked at Map International Company, Ltd., a travel agency in Osaka, Japan, where he learned various ticketing and reservation systems. Absent a detailed description of the beneficiary's employment history, the beneficiary already has substantial training and expertise in the proposed field of training.

The petitioner explains that training in the travel industry is not available in Japan. The petitioner has submitted three letters from different travel agencies in Japan who state that the petitioner's training is unique in that they train employees in all aspects of its operations. The travel agencies in Japan also state that there are significant differences in the petitioner's use and utilization of computers and the internet, especially in areas such as research, reservations and ticketing purposes. However, one of the letters states that some concepts and objectives of the training program are similar to what they have seen in Japan. No evidence has been presented that training in travel services does not exist in the beneficiary's home country. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in his own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. See Matter of Frigon, 18 I&N Dec. 164 (Comm. 1981).

The petitioner states that the on-the-job training is purely incidental to the training. The petitioner also states that the training program is mostly hands-on work with computers and not performing work which is client-based. However, the training program shows that the beneficiary will engage in primarily on-the-job training. The beneficiary will also be paid a salary of \$1500 per month. Further, the training will be conducted by the petitioner's reservations manager, reservations agent, tour

coordinator, and sales manager. The petitioner has not explained how its employees will be responsible for the beneficiary's overall training and supervision in a program consisting of primarily on-the-job training and still be able to perform their duties. The petitioner has not shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training.

Further, 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.

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.