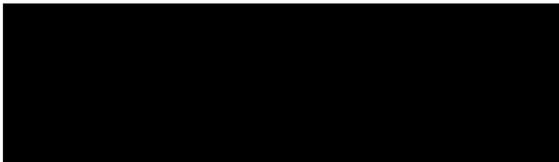




U.S. Department of Justice
Immigration and Naturalization Service

**NRB
D5**

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



File: EAC 98 069 51589 Office: Vermont 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: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The petitioner is an electronic internet magazine. It seeks classification of the beneficiary as a food editor and consultant trainee for a period of six months. The director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. The director also determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director decided that the petitioner did not establish that the beneficiary will not engage in productive employment. The director also decided that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. Finally, the director determined that it is not unreasonable to infer that this filing is an attempt to prolong the beneficiary's stay with productive employment to benefit the petitioner.

On appeal, the petitioner states that it desires to train the beneficiary to represent the petitioner in the preparation, packaging, marketing and merchandizing of kosher food over the internet. The petitioner also states that there are no kosher restaurants in New Zealand.

The director determined that it is not unreasonable to infer that this filing is an attempt to prolong the beneficiary's stay with productive employment to benefit the petitioner. The record does not substantiate this inference. Therefore, this issue will not be addressed.

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 six months for completion. The petitioner produces an on-line magazine whose content contains both Jewish cultural and culinary information. The training program is designed to provide the beneficiary with knowledge to guide the client/advertiser in Web-site design and advertising. The beneficiary's training will include scouting other countries for potential new food products.

The record indicates that the beneficiary has outstanding qualifications that constitute a rare combination of work experience and training. The beneficiary has for three years served as the food editor and section leader on CompuServe's Jewish Community Forum. The beneficiary has a background in the catering and hospitality industry where she gained experience in purchasing food stuffs, white goods and supplies for Wilton House, caterers in Wellington, New Zealand. Finally, the beneficiary has experience as a marketing representative for a media service organization. Consequently, the beneficiary already has substantial training and expertise in the proposed field of training.

The petitioner states that there is no similar training available in the beneficiary's 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). The beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in her 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). No evidence has been presented that such training does not exist in the beneficiary's home country.

The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training

program does not include the means by which the instructor(s) will be evaluating the trainee.

The petitioner states that the training program consists of daily on-the-job training during the course of the normal work week. The petitioner also states that the beneficiary will be spending approximately 120 hours of her time doing productive activities for the web site in conjunction with formal classroom instruction. The petitioner has attached the literature and contact lists from which the beneficiary will be doing follow-up work. The beneficiary will also compile like material and then contact non-traditional venues and potential marketing distributors for the products advertised on the petitioner's web site. 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.