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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: LIN 00 013 50424 Office: Nebraska Service Center Date: APR 27 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: Self-represented

identification 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

Myra L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

APR2701_06D5101

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 The decision will be withdrawn, and the case will be remanded to the director for further action and consideration.

The petitioner is a restaurant. It seeks classification of the beneficiary as a chef trainee for a period of one year. 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 has not demonstrated that the proposed training is not available in the beneficiary's own country. Finally, the director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training.

On appeal, the petitioner states that it does not believe it correctly conveyed the uniqueness of the training available. The petitioner also states that it receives requests from young chefs for training because of its stature and notoriety in the food world.

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 record indicates that the beneficiary will be training with the petitioner as part of his pursuit to become a world-class chef. The petitioner will provide housing, and a stipend of $6,000 annually. The beneficiary will learn basics about regional foodstuffs, the petitioner's preparation methodology and the historical perspectives of local cuisine. The beneficiary has studied with Chef [redacted], world renowned Japanese chef, [redacted], top Australian chef and after his time with the petitioner, plans to work in France with premier chef, [redacted]. Chef [redacted] is considered to be the most cutting-edge chef on the American restaurant scene and the restaurant itself is one of only three in the entire United States to have 5 Mobil Stars, 5 AAA diamonds and be a member of the International Relais and Chateaux organization. Therefore, the petitioner has shown that the proposed training is not available in the beneficiary's own country. Further, the petitioner has demonstrated that the beneficiary does not possess substantial training and expertise in American cuisine.

The training program will be five days per week, eight hours each day and will be entirely hands-on. The beneficiary will be rotated every two months throughout the entire kitchen working closely with the chefs at the canape, garde manger, fish, meat/grill vegetable and pastry stations. The petitioner has explained in detail what the beneficiary will be doing at each of the stations. The petitioner states that at the end of each rotation, the chef will complete the evaluation form and discuss it with the beneficiary. Although the petitioner has now presented a structured training program, this petition cannot be approved for other reasons.

The petitioner has stated that the beneficiary will be working at each of the stations five days per week, eight hours each day. The training program is primarily full-time, practical, on-the-job training. The petitioner has not set forth the proportion of time that will be devoted to observation and instructional training. 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 has 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.

Since this deficiency was not reflected in director's decision, the petitioner will be afforded an opportunity to submit additional evidence. Upon receipt of such evidence, the director will review the entire record prior to entering a new decision.

ORDER: The director's decision will be withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.