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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



08 MAR 2001

File: LIN 97 196 51338

Office: Nebraska Service Center Date:

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a second motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be withdrawn. The appeal will be sustained.

The petitioner is a roofing contractor. It seeks classification of the beneficiary as a roofing contractor trainee for a period of two years. The director determined that the petitioner failed to establish the existence of a valid training program. The director also determined that the petitioner failed to demonstrate that the beneficiary would not be engaged in productive employment beyond that which is incidental and necessary to the training, or employment which would normally be performed by U.S. citizens or residents. The director further determined that the petitioner failed to establish that the proposed training would assist the beneficiary in pursuing employment abroad. The director also stated that the beneficiary already possesses substantial training and expertise in the field of roofing.

On appeal, counsel stated that the Service did not adequately review the evidence submitted by the petitioner, which establishes that the training program has a fixed schedule, objective, and means of evaluation. Counsel stated that the evidence submitted established that the beneficiary will receive formal classroom instruction in personnel management, in the legal/financial aspects of roofing construction, and in engineering aspects of roofing construction. Counsel further asserted that the evidence established that the beneficiary will also receive field training. Counsel argued that the record contains no evidence to support the director's conclusion that the beneficiary already possesses substantial training and expertise in the proposed field of training, or that the beneficiary will be engaged in productive employment during his period of training. Counsel also stated that the petitioner clearly explained its plans to expand its roofing business into the South African market, and therefore the proposed training would assist the beneficiary in pursuing employment abroad.

On motion, the petitioner established that the proposed training in the area of U.S. roofing technology is not available in South Africa. The petitioner also established that it has a valid training program. However, the record still contained insufficient documentary evidence to establish that the petitioning U.S. company had entered into a formal partnership with a construction company in South Africa. Also the petitioner had not established that U.S. roofing techniques and materials would be marketable in South Africa. The Associate Commissioner also determined that the petitioner had not produced sufficient evidence for the record to

support the contention that South Africa is a developing country in the area of modern construction and technology. Rather, the roofing techniques and materials utilized in South Africa are established, and are simply different from those used in the United States. Finally, the Associate Commissioner found that the petitioner had failed to demonstrate that the proposed training in U.S. roofing techniques will assist the beneficiary in pursuing employment in the roofing industry in South Africa.

Review of the record shows sufficient evidence that the Republic South Africa is a developing country in the area of modern construction and technology. It is determined that the knowledge and skill that the beneficiary would gain would be used in South Africa.

On this motion, the petitioner submits a "memorandum of agreement" between it and a company named RDL Construction CC in the Republic of South Africa dated January 27, 1999 forming a joint venture. The document indicates that upon completion of his training program, the beneficiary will return to the Republic of South Africa and operate a branch of the petitioning firm which will operate in conjunction with RDL Construction CC. The petitioner's branch company will be assisting specifically with all the roofing requirements of RDL Construction CC's projects.

Based upon the documentation submitted it is found that the proposed training in U.S. roofing techniques will assist the beneficiary in pursuing employment in the roofing industry in South Africa. The visa petition may now be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.