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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: WAC 00 031 50258 Office: California Service Center Date: MAY 2 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: [redacted]

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

Mark L. Rosenberg

for Robert P. Wiemann, Acting 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 a dental center. It seeks classification of the beneficiary as a dental assistant for a period of 22 months. 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. The director decided that the petitioner does not have the physical premises and enough sufficiently trained manpower to provide the training specified. The director also decided that 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 U.S. citizens and resident workers are regularly employed. Further, the director 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 proposed training program meets the regulatory criteria for approval.

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 22 months for completion. The beneficiary will receive advanced training in a program covering cosmetic and restorative dentistry in the United States.

The beneficiary's educational credentials reflect a lack of courses or training in cosmetic and restorative dentistry. The beneficiary has been employed as a dental trainee, dental assistant, and general dentist, but has not shown to have any practical training or work experience in the proposed field of training. Therefore, the beneficiary has not been shown to have substantial training and expertise in the proposed field of training.

Counsel states that the petitioner wishes to train the beneficiary to become the chief dentist and manager of a planned dental facility in the Philippines. Counsel also states that the petitioner's training program is limited to cosmetic and restorative dentistry, which is unavailable in the Philippines. However, the petitioner failed to present any documentary evidence to support these claims. 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 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).

On appeal, counsel states that the beneficiary will be engaged primarily in on-the-job training, consisting of 35 hours per week. Counsel also states that the beneficiary will sufficiently observe and practice the subjects and procedures discussed in each phase of the program. The beneficiary will be paid a salary of $1,584 per month or $19,008 annually. In each phase of the training program, the beneficiary will observe, receive hands-on training, will assist in the preparation of patients, and participate in different procedures. It appears that the beneficiary will not be merely observing but will be involved in direct patient care and productive labor. Therefore, the petitioner has not established that the beneficiary will not engage in productive employment. Further, if the beneficiary is going to practice the subjects and procedures discussed, then 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.

Finally, the petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program is divided into five parts. Each part or segment has a title and indicates the time period. The training program does not indicate who will be providing the training and the means by which the instructor(s) will be evaluating the trainee. Although the petitioner has the physical premises in which to provide the training, the petitioner has not established that it has enough sufficiently trained manpower to provide the training specified. Counsel states that the petitioner's staff consists of five persons, which include professional dentists, hygienists, dental assistants and office administrators. The petitioner states in his affidavit, that he and his staff will be providing the beneficiary's training. However, the petitioner has not explained how they will still be able to perform their professional duties.

As evidence in the record does not sufficiently established that the beneficiary is coming temporarily to the U.S. in a trainee capacity as per the conditions outlined in 8 C.F.R. 214.2(h)(7), the director's denial of the petition is affirmed.

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.