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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]

File: LIN 01 184 54375 Office: Nebraska Service Center Date: 23 APR 2002

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]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

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 The director's decision will be withdrawn and the the matter remanded to him for further action and consideration.

The petitioner is a law firm which seeks to train the beneficiary as an international clerk for a period of two months. The director denied the petition because he found that the proposed training deals primarily in generalities, because too much of the training was on-the-job training, and because the petitioner failed to provide a fixed training schedule.

On appeal, the petitioner has provided additional information regarding the beneficiary's training. The petitioner states that the beneficiary's training program will consist of 20 hours per week of formal training (50% of the beneficiary's total training). The petitioner has also provided sample training schedules. The petitioner states that any productive employment will be incidental to training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii) describes an H-3 trainee as:

> Having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education in a training program that is not designed primarily to provide productive employment ....

8 C.F.R. 214.2(h)(7)(ii) provides a list of criteria for H-3 training programs. The petitioner must provide a statement which describes the structure of the training program and shows the number of hours that will be spent on classroom instruction and in on-the-job training. The petitioner must also demonstrate that the proposed training is not available in the beneficiary's own country and that the training will benefit the beneficiary in pursuing a career outside the United States. In Matter of Koyama, 11 I&N Dec. 424 (Reg. Comm. 1965), the regional commissioner determined that a petition for an H-3 trainee was properly denied because the training program was excessive in length, repetitious, and would consist principally of on-the-job experience.

The matter will be remanded to the director for him to review the entire record and incorporate a discussion as to whether the petitioner has demonstrated that the proposed training is not available in the beneficiary's own country. The director will also determine if the proposed training will benefit the beneficiary in pursuing a career outside the United States.

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