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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 27 2003

File: SRC 02 073 52011 Office: Texas Service Center Date:

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)

PUBLIC COPY

ON BEHALF OF PETITIONER: [redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center, and certified to the Administrative Appeals Office (AAO) for review. The decision of the director will be withdrawn and the petition will be approved.

The petitioner operates a premier thoroughbred horse farm that engages in thoroughbred breeding, training, racing and sales. It seeks classification of the beneficiary as an equine management trainee for two years. The beneficiary will later serve, as an agent for the petitioning organization in Europe. The director determined that the proposed training is comprised mostly of on-the-job training and such training does not establish eligibility for classification under section 101(a)(H)(iii) of the Immigration and Nationality Act (the Act). The director also determined that the beneficiary already possessed substantial training and expertise in the proposed field of training.

On notice of certification, neither counsel nor the petitioner presents any additional evidence.

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 for 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 petitioning entity was established in 1972 and its gross annual income is currently $2.2 million. The training program consists of two years of comprehensive training in equine veterinary techniques, covering each major area of farm operation and providing a thorough knowledge of the petitioner's particular standards and practices. The training program has two major components: classroom study and field operations; and administrative training. The training focuses on field instruction in a hands-on setting. Upon completion, the trainee is expected to be capable of assisting the petitioning organization in expanding its operation in his home country, including the opening of an overseas office and training personnel.

Upon review, the petitioner's training program schedule explains the type of training and the time devoted to each topic. The on-the-job training is mainly instructional rather than actual productive labor, with the exception of the selling of breeding seasons, that has been shown to be incidental and necessary to the training. Therefore, the petitioner has established that the beneficiary will not be engaged in productive employment.

Further, the beneficiary is being trained to serve as an agent for the petitioner in Europe. The petitioner explains that the beneficiary has a strong equine and farming background giving him the basis to be trained in marketing and managing the petitioner's products and services abroad. The training program is intended to provide the beneficiary with a thorough knowledge of and experience with the practical standards and practices employed by the petitioner. Accordingly, the beneficiary has not been shown to already possess substantial training and expertise in the proposed field of 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 met that burden.

ORDER: The decision of the director is withdrawn. The petition is approved.