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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAG-20 Mass, 3/F  
Conroy Street, NW  
Washington, D. C. 20536



**OCT 20 2003**

FILE: WAC 02 225 51642 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]  
Beneficiaries: [Redacted]

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm. It seeks classification of the beneficiaries as U.S. immigration consultant trainees for two years. The director determined that the training deals in generalities with no fixed schedule, objectives or means of evaluation. In addition, the director determined that the petitioner failed to establish that the training would assist the beneficiaries in pursuing a career outside the United States.

On appeal, the petitioner (which, as a law firm, is also counsel) states that the training program has a fixed schedule and objectives as well as a means of evaluation. The petitioner also states that the beneficiaries will work for the petitioner in their home country, and therefore, the training will assist them in pursuing a career outside the United States.

Section 101(a)(15)(H)(iii) of 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 record, as it is presently constituted, contains: a copy of the training program; a summary of the training and its objectives; a schedule of the training; background information on the trainers; sample quizzes and essay questions used during the evaluation process; background information on the beneficiaries; an overview of some of the training materials; photographs of the office space, and a variety of other documents.

The director denied the petition because the training program deals in generalities, lacking objectives or means of evaluation. The director stated:

The petitioner has not shown that the classes have a fixed schedule. The training program is comprised of four phases; however, it is presented as an outline. Without knowing how long the courses will last or their beginning and ending times, it can not be determined with any certainty that the training program can be completed within the time requested by the petitioner. Finally, there is no record to establish how the beneficiary will be evaluated.

On September 27, 2002, the petitioner submitted its response to the director's request for evidence. Included in that response (Exhibit "B") is a schedule of training and the objectives of the training. The schedule breaks the training into segments with specific dates and topic areas. In another document (Exhibit "H"), the petitioner provides sample quizzes and essay questions to be used in the evaluation process, and the evaluation process is described in Exhibit "B," as well. It is not clear what further information the director needs in order to determine that the training program provides enough detail to meet the terms of the regulations. The information that the petitioner has already submitted includes a fixed schedule of classes, the objectives of the program and an evaluation structure. Given that this

information is included in both the petitioner's response to the request for evidence, and the appeal, the director's remarks on this matter are withdrawn.

The director also found that the training would not benefit the beneficiaries in pursuing a career outside the United States. Specifically, he stated, "[T]he petitioner has failed to demonstrate that the training will assist the alien in his or her career abroad. There must be a connection between the training received and the alien's work abroad." The petitioner asserts that he intends to train the beneficiaries in both the specifics of the business and in U.S. immigration law so that the beneficiaries can work with an affiliate office overseas. The petitioner did not provide adequate evidence regarding the nature of the affiliate office. A photograph of a desk, without further documentation such as a lease or other legal agreement, does not establish the existence of an affiliate office. Nor is there any proof of a contract between the petitioner and the beneficiaries to establish that they will work for the petitioner subsequent to the training program. The petitioner's statement, by itself, that the training program is intended to prepare the beneficiaries for employment with the petitioner, is insufficient. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

**ORDER:** The appeal will be dismissed.