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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

OCT 23 2003

FILE: WAC 02 129 50625 Office: CALIFORNIA 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)

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 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 residential care facility for the elderly. It seeks classification of the beneficiary as a care coordinator trainee. The director determined that the training program lacked structure, a fixed schedule, and specific course content that would include classroom as well as on-the-job training.

On appeal, counsel submits a statement asserting that the director erred in his decision. Counsel states that the petitioner submitted a training program that clearly indicate what courses will be taught, when they will be taught, and how the beneficiary will be evaluated.

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 record, as it is presently constituted, contains an outline of a training program, a statement from the petitioner's president on letterhead different from the corporate name under which the petitioner filed the petition, and several statements on counsel's letterhead signed by the petitioner's president.

On June 27, 2002, the director issued a request for evidence asking for, in part:

> Describe in detail the type of training and supervision to be given and the structure of the schooling program. Is there a "formal" structure to the training program? Submit a color photo of the classroom, which will be used for the trainee. How many hours of classroom instruction are involved? How many hours of hands on training? What kind of materials will be used in classroom instruction? How will the petitioner appraise the alien's performance in the training program? Submit samples of all instructions to be used in the classroom, also material used to appraise the aliens [sic] performance in the training.

Counsel responded on July 18, 2002. In response to the above request, counsel stated:

> Training will take place at [redacted] and not in a classroom. [redacted] the president of [redacted] felt that it would be more effective and economical to train [the beneficiary] on site – [the beneficiary] will be on the premises to see how the company operates, to shadow trainers and also makes it easier for trainers to provide the training and not have to drive to an off-site location. . . . The trainee will be taught by means of lectures, reading materials and also observing how to deal with various situations.

Counsel did not submit any further information regarding the training. The charts submitted provide an outline of topics to be covered (i.e., "health economics" for three hours per week for 12

months; "managed care and integrated delivery systems" for one hour per week for 12 months, etc.), but provide no specifics as to what will be covered under each of these topics, how they will be taught (beyond the statement above regarding "lectures, reading materials and also observing how to deal with various situations."). The regulations forbid approving a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner has not established that the training program does not deal in generalities. The outline of the training program appears to provide some specifics, but when reviewed in conjunction with the explanation of the training program provided in the response to the request for evidence, it is clear that there is no established structure for how the information is going to be taught. Counsel asserts, "[O]ne does not need to be taught in the classroom to received training." The issue at hand is not exactly where the beneficiary would be taught, but how she would be taught. 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).

Beyond the decision of the director, the petitioner has not demonstrated that the training is unavailable in the alien's own country. The petitioner and counsel repeatedly refer to the petitioner's new, innovative approach to care for the elderly and the petitioner's one-of-a-kind training, but there is little detail provided to describe how the training differs from that available in any elder-care, or any other healthcare facility. Without this kind of documentation, the petitioner has not established that the training is unavailable in the beneficiary's home country.

Additionally, the petitioner did not establish that the training would benefit the beneficiary in pursuing a career outside the United States. There are several references to a "proposed international associate," and that the beneficiary might ultimately be employed by the petitioner at this "proposed associate." The petitioner did not provide any information regarding this plan, or any agreement between the petitioner and the beneficiary for future employment. Counsel stated that there are no care coordinating training programs in the beneficiary's home country; given this information, it is not clear how the beneficiary would be able to use the skills gained in this training program in pursuing a career outside the United States.

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.