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U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

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



OCT 30 2003

FILE: SRC 01 261 50496 Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:
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:



*identifying 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 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, Texas Service Center, who then certified the matter to the Administrative Appeals Office (AAO) for review. The decision of the director will be withdrawn and the matter shall be remanded for further consideration.

The petitioner is a recording studio. It seeks classification of the beneficiary as a trainee. The director determined that the training program consists primarily of on-the-job training and, therefore, cannot be approved.

Neither counsel nor the petitioner submits evidence in response to the notice of certification.

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: a copy of the training program; copies of the beneficiary's passport and I-94; a floor plan of the petitioner's premises; photographs of the training facilities; brief descriptions of the staff's background; and two letters from people familiar with the music industry in the beneficiary's home country, stating that similar training cannot be obtained there.

The director denied the petition because she determined that the training program was comprised primarily of on-the-job training, since it is equally divided between classroom instruction and practical training. The director relied on *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965), stating that Citizenship and Immigration Services (CIS) had previously:

[W]ithheld classification as a trainee (H-3) where the beneficiary was to be engaged primarily in on-the-job training. In that case, while the beneficiary was to supplement his training with some classroom instruction, the petition was denied upon a finding that the majority or primary part of the training proposed was to be on-the-job training. In the instant petition, because the proposed training is comprised mostly of on-the-job training, the proposed training does not establish the beneficiary's eligibility.

The instant petition can be distinguished from *Sasano*. The beneficiary in that case was to be the sole employee whose entire training was to be on-the-job productive employment, supplemented by unscheduled trips to hear university lectures. In contrast, the beneficiary in this case would be involved in on-the-job training for 50 percent of the time, with the other 50 percent devoted to classroom training. Counsel states that only approximately five percent of the on-the-job training would be productive employment. Due to the subject matter of the training, it would appear that some of it could only be learned on the job. However, due to the general nature of the description of the training program, there is not enough information in the record to determine with certainty whether this is the situation in the

current matter. The comments of the director on this matter are withdrawn.

Beyond the decision of the director, 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 proposed training program is presented in an outline format and is broken down by topic and length of time designated to cover the topic (i.e., "Planning & Pre-Production Process, 7 months;" "State of the Art Recording Equipment, 7 months," etc.). Each topic is then divided into sub-topics, under headings of "direct instruction" and "practical training." Some topic areas are more specific than others, but the timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations. In addition, there is no means of evaluation included in the training program.

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 preparing the beneficiary to "manage a unit" of the petitioner's operations in the beneficiary's home country and that the beneficiary will be operating a branch of the petitioner's business. The petitioner did not provide any information regarding whether this branch currently exists, or, if not, when it might exist and what the business plan entails. Nor was there any evidence of an agreement or contract between the petitioner and the beneficiary for future employment.

Finally, it is not clear that the training is compatible with the nature of the petitioner's business. The only two references to the petitioner that could be found on the Internet, described it as (1) providing lighting systems, and (2) an exporter of electronic equipment.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of: (1) the structure of the training program; (2) the means of evaluation for the training; (3) the means by which the training will benefit the beneficiary in establishing a career outside the United States; and (4) the nature of the petitioner's business. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought

remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of July 3, 2002 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.