

U.S. Department of Homeland Security

Citizenship and Immigration Services

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



OCT 30 2003

FILE: LIN 03 125 51473 Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner: [Redacted]
Beneficiary: [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

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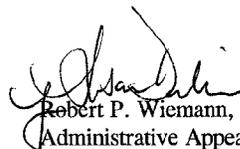
INSTRUCTIONS:

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dog kennel. It seeks classification of the beneficiary as a kennel public relations trainee. The director determined that there is no structured training program. In addition, the director found that the beneficiary does not have any background in the petitioner's business. The director also determined that, without a structured training program, the petitioner could not produce a documentary, as intended. Finally, the director stated that the petitioner did not submit any documentary evidence, such as a film production contract, to prove that the beneficiary's intended documentary would focus on the petitioner's breed of dogs.

The petitioner submits a brief on appeal. The petitioner states that it is not possible to provide a specifically structured training program when working with animals and their life cycles. The petitioner also states that it is irrelevant whether the beneficiary has a background in the petitioner's field, since the reason for the training is research for a documentary. The petitioner asserts that it is possible to make a film documentary without a structured training program. The petitioner also asserts that independent producers rarely have a film contract prior to researching the intended topic and drafting a substantial storyline.

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 beneficiary's passport; the beneficiary's resume and diploma; the beneficiary's financial statement and certificate of employment; the petitioner's responses to the director's request for evidence; and the petitioner's application for alien employment certification.

The director determined that the petitioner had not established that there is a structured training program. The petitioner described the training as follows:

The applicant's training will include all aspects of Silver Labs, i.e., day to day operation of CCK [the petitioner], breeding and whelping of litters, raising the pups, dispersion of pups to owners, training the pups, training and handling the junior and adult labs, and the public relations and advertising done by CCK. The purpose of this training is to allow the applicant to observe the development of one specific puppy, i.e., mating the parents, whelping a specific pup's litter, dispersing the pup's littermates to their new owners, and the subsequent development and training of one subject pup.

Each aspect researched will require various allotments of time. Kennel maintenance will necessitate only a few hours/day. However, other areas of research will require a specific devotion of time as each aspect arises, i.e., breeding schedules are set by Mother Nature; whelping schedules depend on when each bitch decides to whelp and how long she takes to whelp; time allotment for pup care will depend on the size of each litter, etc. It is because of these varying time allotments that an annual/monthly pay schedule has been chosen for the remuneration of this applicant.

Educational instruction will be done on the applicant's own initiative and consist of a limited amount of basic genetic and background research. On-the-job training will vary with each stage researched.

The regulations state that a training program may not be approved if it deals in generalities with no fixed schedule, objectives, or means of evaluation. 8 C.F.R. § 214.2(h)(7). On appeal, the petitioner states:

The areas the beneficiary intends to research are not physically possible to structure on a day to day, hour by hour, structured training program. The areas to be researched are subject to the whims of nature and biological functions of animals. More importantly: there are no structured training programs when doing animal research in the field.

While Citizenship and Immigration Services (CIS) takes note that animals and their activities cannot be put into specific timeframes and structures, the regulations require both a fixed schedule and a means of evaluating the beneficiary within the training program. The petitioner's proposal has neither.

The second basis for the director's denial is that the beneficiary has no background that involves canines. This is irrelevant to the issue of whether the beneficiary and the training program are eligible for the H-3 classification. There is no requirement that a beneficiary have any background in a particular area in order to qualify for training. The director's comments on this matter are withdrawn.

The director also denied the petition for the following reason: "The stated purpose of the proposed training is to produce a canine documentary in Georgia, based on an unstructured training

program, which seems unlikely, because film documentaries based on the foregoing, would usually necessitate a structured training program." It is not clear what point the director is attempting to make with this statement; therefore, the remarks are withdrawn.

The final basis for denying the petition is that the petitioner stated that similar training is unavailable in the beneficiary's home country since the particular breed of dog does not exist there, but did not submit credible evidence, such as a film production contract, to indicate that the intended documentary will focus on the petitioner's particular breed of dog. The petitioner states on appeal that independent filmmakers rarely have a film production contract prior to doing extensive research and preparing a comprehensive storyline. As the petitioner submitted documentary evidence regarding the beneficiary's employment working for a film studio, and because the request for evidence did not ask for this type of evidence, the director's remarks are withdrawn.

Beyond the decision of the director, the beneficiary will not actually be engaged in training in the instant case, but will instead be performing research in anticipation of producing a documentary film. The appropriate classification in this instance would be B-1, a temporary visitor for business.

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

ORDER: The appeal is dismissed.