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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

SEP 04 2003

FILE: WAC 01 021 53221 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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded to the director for further consideration.

The petitioner is a cabinet and furniture maker. It seeks to employ the beneficiary as a cabinetmaker trainee. The director found that the petitioner had not established that the training is unavailable in the beneficiary's own country as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(1).

On appeal, counsel submits a brief stating that the director relied on a misstatement in the original petition, and ignored further information that was submitted in response to the request for additional evidence.

In the petitioner's original submission, he responded "yes" to the question in Section 4 asking whether similar training is available in the alien's country. He went on to state, "I believe that similar training is available in [the beneficiary's] home country, France." In the petitioner's response to the director's request for additional evidence, however, he explained that in the French system of education, one is steered to either a vocational or professional track by age 15. The beneficiary studied business on the professional track. According to the petitioner, once one finishes school it is very difficult or impossible to change professions. There is no avenue for training and receiving the needed credentials at that point. The petitioner submitted a set of materials describing the national education diplomas in France. It states: "The Department of National Education offers a broad range of training programs leading to diplomas in professional, technical, and general education. Training begins at various levels: right after ninth grade, at the baccalaureat level, and after the baccalaureat." On appeal, counsel reiterates that while the response given on the initial petition is accurate, it is not complete in that the training is only available if one has chosen that course early in one's educational development.

In view of the foregoing, it is concluded that the petitioner has demonstrated that the specific training being offered is not available to this beneficiary in his own country.

Nevertheless, the petition may not be approved at this time. The director has only addressed the issue of the availability of training in the beneficiary's own country. The director has not determined whether the structure and schedule of the training

program meet the requirements of the regulations. Therefore, the matter shall be returned to the director for a new determination to address these other issues.

ORDER: The matter is remanded to the director for further action and entry of a new decision in accordance with the above discussion, which if adverse to the petitioner is to be certified to the Administrative Appeals Office for review.