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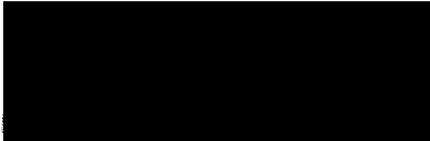
U.S. Department of Homeland Security

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Bureau of Citizenship and Immigration Services

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



SEP 04 2003

FILE: EAC 02 196 51883 Office: VERMONT 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:



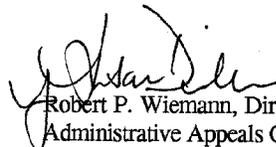
INSTRUCTIONS:

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

The petitioner is a Roman Catholic religious order for women. Its sole mission is to minister to the elderly poor. It seeks classification of the beneficiary as a novice/intern in the order. The director determined that the beneficiary would be involved in on-the-job training and productive employment beyond that which is incidental and necessary to the training. The director also stated that the beneficiary would be involved in the normal operation of the organization in which citizens and resident workers are normally employed. In addition, the director claimed that the beneficiary could receive her training in France rather than the United States.

On appeal, the petitioner submits a brief stating that the director erred in making these determinations. The petitioner states that the on-the-job training is an integral part of a novice's formation, given the mission of the order. The petitioner also states that no citizens or resident workers would be displaced, as the staff of the homes for the aged are required to be licensed by the state; the novices and other religious workers who work with the residents provide services beyond those of the paid staff. The petitioner states that the beneficiary could not enter the novitiate in France, as she speaks no French.

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 the order's Constitutions and various other information about the [REDACTED], a document outlining the formation and training program, an additional document listing the number of class hours attached to each area of study, and a daily schedule for the novices.

The director determined that the beneficiary would be involved in on-the-job training and productive employment beyond that which is incidental and necessary to the training. The beneficiary is to be trained to become a member of a religious order, and the mission of that order is providing care to the elderly. The training includes religious education, classes on topics related to the elderly and significant time spent in the nursing home providing direct care, such as feeding, dressing and bathing. As care for the elderly is the manner in which the Little Sisters of the Poor live their vocation, it is difficult to consider it either on-the-job training or productive employment, as such.

The director stated that the beneficiary would be involved in the normal operation of the organization in which citizens and resident workers are regularly employed, in violation of 8 C.F.R. § 214.2(h)(7)(ii)(A)(2). The [REDACTED] run nursing homes, which are staffed by licensed nurses and certified

nurse aides, as required by law. The novices provide care to the residents as an integral element of their formation, mandated by the Constitutions of the order. While the novices are, in fact, working in a position in the normal operation of the business, no workers are being displaced. The novices are practicing their faith through their work with the elderly, and are not supplanting other workers in the process.

The director claimed that the beneficiary could receive her training in France rather than the United States, since all of the women in their fifth year of training spend the year in France anyway—and the beneficiary will need to learn French eventually. This is irrelevant to this adjudication. The regulations state, "[T]he petitioner is required to demonstrate that the proposed training is not available in the alien's own country." (Emphasis added). 8 C.F.R. § 214.2(h)(7)(ii)(A)(1). As the beneficiary is a native of the Philippines, the director's interpretation of this regulation is inappropriate. There is no requirement to show that the training is not available anywhere else in the world. The petitioner submitted evidence to show that the order does not have a novitiate in the Philippines, which is sufficient to meet the terms of the regulation.

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 sustained that burden.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.