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



FILE: WAC 01 192 50244 Office: CALIFORNIA SERVICE CENTER

Date: **SEP 12 2003**

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:



PUBLIC COPY

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a thoroughbred horse farm, specializing in the care and training of weanlings, yearlings and two-year-olds. It seeks classification of the beneficiary as an international equine management trainee. The director determined that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation, which is prohibited by 8 C.F.R. § 214.2(h)(7)(iii)(A).

On appeal, counsel submits the petitioner's brief, a copy of the training schedule which had been filed with the original petition, and an evaluation of the petitioner's training program by Hall of Fame horse trainer, Neil Drysdale. The petitioner states that the director appears to have overlooked the details of the training program in making his decision.

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 a training program schedule showing a two-year program covering each major area of farm operation, and providing an overview of veterinary medicine. The program will provide a thorough knowledge of the petitioner's particular standards and practices, in anticipation of the beneficiary managing a similar operation for the petitioner overseas.

The director stated in his denial that the petitioner had not submitted any evidence to clearly demonstrate that it had a training program. The director implied that the petitioner had been non-responsive in its reply to the request for additional evidence and, therefore, was unable to clearly show that there is a bona fide program. The crux of the director's denial was that the training program dealt in:

[G]eneralities with no fixed schedule, objectives, or means of evaluation. The fact that the trainee can take any number of courses at Hartnell College and that some of the personnel used for training don't even work for [REDACTED] make it appear that the training schedule is not very structured.

Upon review, the petitioner's training program schedule explains the type of training and the time devoted to each topic. In addition, the petitioner stated that the trainees are expected to take at least two semesters of coursework in the Animal Health Technology Department at Hartnell College, which provides the general principles and practices of veterinary medicine. Despite the director's assertion, there is no requirement that all of the trainers in a given program work exclusively for a petitioner. In addition, the petitioner responded to the director's request for additional evidence with the names of the individuals who would be handling each section of the training.

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 appeal is sustained. The petition is approved.