D5 [redacted]

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: WAC 01 084 54329 Office: CALIFORNIA SERVICE CENTER Date: SEP 23 2003

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]

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

The petitioner is a manufacturer, wholesaler, and retailer of women's clothes and apparel. It seeks classification of the beneficiary as a merchandise management intern. The director determined that the evidence does not show that the petitioner has the physical plant and sufficiently trained manpower to provide the proposed training. The director also stated that the program of study is general with lessons that are not specifically targeted to the petitioner's practices, which would allow for similar training to occur in the beneficiary's home country.

On appeal, counsel submits a brief stating that the director had erred in his decision. Counsel asserts that the petitioner has 30 employees and sufficient offices to provide training. In addition, counsel states that the petitioner needs a highly trained individual with a thorough knowledge of its business practices to open an overseas office, and that these skills can be acquired only through the proposed training.

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 copy of the training program describing the areas of training, various documents regarding the beneficiary's and her family's immigration status, the petitioner's business documents including the articles of incorporation and the balance sheet, and the petitioner's company brochure.

On April 30, 2001, the director issued a request for evidence asking for, in part:

> [E]vidence of when the training program was established and how many trainees have graduated from this training program. Provide evidence showing why training, [sic] as a merchandise manager cannot be obtained in the beneficiary's own country. . . . Provide evidence that the petitioner has the physical plant and sufficiently trained manpower to provide the training offered.

The petitioner responded on June 18, 2001. In response to the request for evidence that the petitioner has an adequate physical plant and trained manpower to provide the proposed training, the petitioner's entire response stated:

> [redacted] [sic] [redacted] was established in 1989. Our Gross Annual Income in NINE MILLION SIX HUNDRED THOUSAND ($9,600,000) DOLLARS. We currently employ thirty (30) employees.
>
> Please find enclosed website of the company and company catalog showing various styles of the [redacted] products as Exhibit "L."

The petitioner's response does not provide any evidence of the ability of the petitioner to provide the proposed training. It indicates that the company appears to be financially viable with a staff of 30, but does not address either the physical plant or the skills and training of those who would be providing the beneficiary's training. Additionally, the reply is non-responsive to the issue of when the training program was established and how many people have gone through the program.

On appeal, counsel reiterates that the petitioner employs 30 people, and states that the physical plant is large enough to provide adequate working space. Counsel goes on to state, "We are informed and believe that [redacted] has executive offices, a design studio, a conference room, manufacturing space, an area where its designs can be shown, a designated area where its outside designs are received, and another designated area from which its shipments are made. [redacted] thirty employees man each working area." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, this portion of the director's decision shall not be disturbed.

The director's second basis for denying the petition is that the program of study is general with lessons that are not specifically targeted to the petitioner's practices, and which would, therefore, allow for similar training to occur in the beneficiary's home country. On appeal, counsel asserts:

> [redacted] will require a highly trained individual, with a thorough understanding of its business goals, theories and operations to manage its Korean branch. . . . Through its training, which encompasses not only experience in the nuances of promoting Timing's original styles and designs, and their distribution and sale, but also the purchase, distribution and sale of the cutting edge fashion of some of the most preeminent alternative designers, [redacted] trainees receive invaluable information and experience that is not available in most foreign countries, including [the beneficiary's] native Korea.

Much of the training is of a general nature, and in areas that the beneficiary would seem to already have experience as a result of

her previous position as a fashion stylist in Brazil. There are some areas of the training, however, that are specific to the petitioner and its business operations. Since some of the training clearly could not be learned in the beneficiary's home country, the director's comments on this basis for denial are withdrawn.

Beyond the decision of the director, the petitioner has not demonstrated that the proposed training is sufficiently detailed to meet the requirements of the regulations. 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires a statement describing the type of training and supervision to be given, and the structure of the training program. The petitioner's proposed program is broken down into time periods of several months each, with general topic areas, but no detail as to how that training will occur, who will be providing the training, or the actual structure of the program. The petitioner's November 25, 2000 letter submitted with the original petition states: "Approximately 40% of the program will be devoted to academic instruction. . . . [I]ncidental productive employment will constitute approximately 60% of the period of supervised training." There is no indication in any of the evidence presented as to how the academic instruction is structured or imparted.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.