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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

SEP 24 2003

FILE: SRC 02 040 53925 Office: TEXAS 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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a golf and country club. It seeks classification of the beneficiary as an assistant golf professional for 18 months. The director determined that the position consists primarily of on-the-job training, and the training does not establish the beneficiary's eligibility under Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act). In addition, the director determined that the beneficiary already possesses substantial training and expertise in the proposed training area.

On appeal, counsel states that the program includes substantially more classroom-type instruction than the director considered in her decision. Counsel also states that the beneficiary does not possess substantial training and expertise of the type prohibited by the regulations.

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 type of training, the supervision to be given and the structure of the training program. The training consists of three separate levels, all of which are required to attain the level of PGA Golf Professional. The beneficiary has completed the first level of the training. The second level consists of self-study classes in business communications and turfgrass management, as well as seminars in analysis of the swing, business planning and operations, and customer relations. At each level, the beneficiary is required to pass written knowledge tests, skills simulations and work experience interviews. At the same time, the beneficiary will work as an assistant golf professional in an apprentice position to a PGA Golf Professional. Upon successful completion of all three levels of training, the beneficiary will be designated as a PGA Golf Professional, which will enhance his ability to obtain a position in his home country.

The director denied the petition because the training program was primarily on-the-job training. The director relied on *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965), which held that an individual who would be working 8-10 hours a day as the only employee of an orchard, with no training other than full-time on-the-job training, did not qualify as an H-3 beneficiary. The instant case is distinguished from *Matter of Sasano*, however, in that there is a structured training and testing program beyond the on-the-job training. In addition, the work that the beneficiary would be performing at the golf club would employ the skills learned through the coursework, rather than be the sole method of learning. The nature of the position of a golf professional, which includes elements of teaching and golf course operation, requires that there be an on-the-job training component, but the on-the-job training is primarily instructional, rather than actual

productive labor. Therefore, the petitioner has established that the beneficiary will not be engaged in productive employment.

The director also based her decision on the premise that the beneficiary already possesses substantial training and expertise in the proposed field of training. While the beneficiary has expertise in the sport of golf, he has only completed one of the three levels of training required to acquire the designation of PGA Golf Professional. He has not had significant training in the skills needed to be a golf professional. The training program is intended to provide the beneficiary with a thorough knowledge of and experience in the variety of skills needed to fulfill that role. Therefore, it is determined the proposed training is *not* "On behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training," as prohibited by 8 C.F.R. § 214.2(h)(7)(iii)(C).

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.