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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

SEP 24 2003

FILE: EAC 03 021 52936 Office: VERMONT 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 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a resort hotel and gourmet restaurant, which is part of the [redacted] group. It seeks classification of the beneficiary as a hospitality management trainee. The director determined that the beneficiary would be involved in the normal operation of the organization in which citizens and resident workers are normally employed. The director also found that there is no firm commitment that the beneficiary will return to Europe at the end of the proposed training.

On appeal, the petitioner submits a brief stating that the director erred in making these determinations. The petitioner states that on-the-job training is an integral part of training in the field of hospitality management and it is not barred by the regulations. In addition, the petitioner states that the hotel is fully staffed, and the beneficiary would not be performing duties in place of regular staff. The petitioner also references several letters that had been submitted by an Italian resort hotel offering employment to the beneficiary upon completion of her training in the United States.

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 hotel's training program, two letters from Elio Pancioli of Gruppo Pancioli in Italy offering the beneficiary a position following her training, several letters from industry leaders confirming the necessity of international training for managers of international hotel and restaurant properties, course information from three of the United States' leading universities in hospitality management confirming the requirement of on-the-job training, and a variety of information regarding the reputation of the petitioner.

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 in hotel management through a combination of classroom instruction and on-the-job training. The petitioner submitted a letter from a placement officer at Ecole des Arts Culinaires et de l'Hotellerie, one of France's top hospitality management schools. This letter addressed both the need for international training and stated that, in this field, "one learns by doing." George Wardman, the President of the North American Delegation of Relais & Chateaux, stated that on-the-job training in hospitality management is an industry standard and that people are primarily trained via mentoring. The petitioner also submitted materials from Johnson & Wales, Cornell University School of Hotel Administration and University of Nevada, Las Vegas College of Hotel Administration, all leaders in hospitality management studies. Each program integrates on-the-job training into its degree program, which supports the petitioner's and Mr. [redacted] contentions that this type of training is indeed, the industry standard.

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 petitioner submitted information regarding its staffing structure, which indicates that the hotel is fully staffed. The training program has a strong emphasis on mentoring, meaning that the beneficiary will learn by working with an individual already performing a function, rather than being fully inserted into that position to work on her own. The beneficiary will not be supplanting other workers in the process.

The director stated, "It appears that the salary and 'standard company benefits' received by the beneficiary distinguish her as an employee in the Hospitality Management position of the Inn. The ultimate staffing of domestic operations under the H3, visa classification is prohibited under H3 regulation. [sic]" There is nothing in the regulations which prohibits a trainee from receiving a salary and benefits. The director's comments are, therefore, withdrawn.

Finally, the director determined the "record fails to establish that the beneficiary will return to Europe when training has been completed." The petitioner submitted a letter from Elio Pancioli with the initial petition, which specifically offered the beneficiary a job in Italy upon her completion of the petitioner's training program. Counsel submitted a second letter from Mr. [redacted] with the appeal, reiterating the job offer. The director appears to be relying on a statement in a letter from [redacted], the president of the North American Delegation at [redacted] that on-the-job training affords employment opportunities in the United States as well as internationally. Mr. [redacted] was writing in generalities about industry standards; yet, the director relied on that statement over two letters offering the beneficiary a specific job. It is not clear what further information the director would want to see to assess that the beneficiary will utilize her training outside the United States. As the record contains sufficient evidence of a job offer outside the United States, the director's decision to deny the petition, in part, on this basis shall also be overturned.

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.