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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: EAC 03 023 50148 Office: VERMONT SERVICE CENTER Date: APR 07 2004

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a food production company. It seeks classification of the beneficiary as a production supervisor trainee. The director determined that the petitioner's company is too small to support the level of the proposed training. In addition, the director found that the three-year program exceeds the length of time allowed for H-3 visa recipients. Finally, the director stated that the petitioner did not establish that the training is unavailable in the beneficiary's home country.

On appeal, counsel submits a brief stating that the director erred in making these determinations. Counsel states that the petitioner has adequate staff to provide the training, and that the petitioner established that the training could not be provided overseas. In addition, counsel states that there is no time limitation on H-3 training programs.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (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 description of the 36-month training program; copies of the beneficiary's passport, visa and I-94 card; and letters from the petitioner.

The director stated that the extensive three-year training program exceeds the two-year maximum limit for an H-3 visa. On appeal, counsel states, "You noted that H3 [sic] visa has a two-year maximum limit. This is incorrect, and you provided no authority for this proposition." The regulation at 8 C.F.R. § 214.2(h)(9)(iii)(C)(*1*) states, in pertinent part: "An approved petition for an alien trainee . . . shall be valid for a period of up to two years." The petitioner's training program is for three years, and the beneficiary would not be able to complete the proposed training in the time frame allowed by the regulations.

The director also found that the petitioner had not established that the training in unavailable in the beneficiary's home country. On appeal, counsel asserts, "Petitioner explained that the training here is to be specific to the personnel and equipment in the US. [sic] This is valid reason [sic] for the training to be

required in-site, at the US, [sic] where the equipment is installed." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the director determined that the petitioner, with a staff of two, did not have adequate personnel and resources to provide the level of training proposed. Counsel states on appeal, "Please note that in addition to two full time managerial employees, the company employs over 15 independent contractors, hence petitioner has the physical plant and sufficiently trained manpower to provide the training specified." 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).

Beyond the decision of the director, there is no evidence in the record regarding how the beneficiary would be evaluated during the training, in which case the program could not be approved. 8 C.F.R. § 214.2(h)(7)(iii)(A).

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.