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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 199 55361 Office: CALIFORNIA 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 dental prosthetics laboratory. It seeks classification of the beneficiary as a crown and bridge dental lab technician trainee. The director determined that the petitioner did not establish that the training is unavailable in the beneficiary's home country. In addition, the director found that the beneficiary would be engaged in productive employment because of the proposed compensation.

Counsel submitted a timely Form I-290B on September 15, 2003 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

On appeal, counsel submits a brief statement asserting that the compensation was a nominal amount, and that the director erred in discounting a letter from an expert submitted in response to the director's request for evidence.

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;

(2) 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 82-week training program; copies of the beneficiary's visa and I-94 card; letters from the petitioner; the beneficiary's transcript and graduation certificate; a certificate indicating that the beneficiary's business closed in 1994; several of the petitioner's business documents; and a letter from the president of an educational institution in the United States that trains dental technicians.

The director stated that the petitioner did not establish that the training is unavailable in the beneficiary's home country. On appeal, counsel states that the director ignored the letter from an expert addressing this issue. The AAO notes that there is no evidence in the record to establish the individual as an expert or a "recognized authority" as defined by the regulations at 8 C.F.R. § 214.2(h)(4)(ii).

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The letter submitted speaks in generalities about the level of training that is currently available in the beneficiary's home country based on the writer's "observ[ation] and evaluat[ion of] the skills and knowledge of students who have received dental laboratory technology education in [the beneficiary's home country]." This in no way establishes that the training is unavailable in that country.

The director also found that the amount of proposed compensation was high for a training program, and indicated that the beneficiary would be involved in productive employment instead. However, as the AAO is dismissing the appeal because the petitioner did not establish that the training is unavailable in the beneficiary's home country, it will not discuss the issue of productive employment.

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.