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

U.S. Citizenship and Immigration Services

[redacted]

APR 09 2004

FILE: WAC 03 150 51743 Office: CALIFORNIA 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:

SELF-REPRESENTED

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 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 petition will be denied.

The petitioner is a church. It seeks classification of the beneficiary as a 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 petitioner had not established that the beneficiary would use the knowledge or skill learned outside the United States.

On appeal, the petitioner submits a brief and supporting documentation.

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 training program schedule showing a two-year program; the beneficiary's education credentials; an information manual regarding the training program; reading assignments and exams for some of the classes; a copy of the beneficiary's passport, visa and I-94 card; the beneficiary's transcript for his first semester in the training program; and several documents regarding the tax-exempt status of the petitioner.

The director requested additional evidence in nine areas and then determined that the information submitted did not establish the beneficiary's eligibility. In the response to the request for evidence, the petitioner submitted a statement asserting, "You will find that the documents I have submitted provide the adequate information that you requested in your reply letter. The documents were provided in my original application what [sic] you received on April 16, 2003." The director requested the additional evidence because there was not enough information in the original application to substantiate an approval. The petitioner provided no information relevant to the director's request.

Citizenship and Immigration Services' regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of a Request

for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

On appeal, the petitioner submits a document that is very similar to the information submitted with the initial petition, although it provides a small amount of additional information. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits a portion of it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The AAO notes that the appeal still does not address the issue of whether the training is available in the beneficiary's home country. The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner did not respond to the director's request for evidence and so did not establish that the training cannot be obtained in the beneficiary's own country, or that the beneficiary would use the knowledge or skill learned outside the United States; therefore, the petition cannot be approved.

The AAO notes that the beneficiary entered into the proposed training on February 17, 2003, despite the fact that the petition had not even been filed at that time, and therefore the beneficiary violated his immigration status.

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.

ORDER: The appeal is dismissed. The petition is denied.