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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: WAC 03 069 51548 Office: CALIFORNIA SERVICE CENTER Date: APR 0 9 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:

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.

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; and several documents regarding the tax-exempt status of the petitioner.

The director requested additional evidence in 11 areas and then determined that the information submitted did not establish the beneficiary's eligibility. In the response to the request that the petitioner submit additional evidence to demonstrate that the training is unavailable in the beneficiary's home country, the petitioner repeated the information submitted with the petition and described the structure and goals of the church, but 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 addresses the issue of why the training is unavailable in the petitioner's home country:

> The national religion of Malaysia is Islam and the **national language is the Malay language.** The Malay language is the medium of instruction in public schools and university, and mainly used to spread the Islamic religion. There are more than 60% of population [sic] in Malaysia are Muslim. And it is illegal for Christian [sic] to preach the gospel on campus. In addition, **there is no English training in Malaysia.** . . . Since English is an international language, she will be able to preach the gospel to the citizens of Malaysia and other parts of the world when she leaves the United States. [Emphasis in the original].

This provides little additional information. 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).

The AAO notes that the beneficiary entered into the proposed training on February 18, 2002, despite the fact that the petition was not filed until January 2003, and therefore the beneficiary violated her 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.