U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

D5

[redacted]

MAY 19 2004

FILE: WAC 02 275 50629 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:

[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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner filed a motion to reopen, which was granted, but the director again denied the petition, 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 custom home builder that seeks to employ the beneficiary as a level one apprentice. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii). 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. Finally, the director stated that the training program is general in nature, with no fixed schedule, objectives, or means of evaluation.

On appeal, counsel submits a brief stating that the director erred in making these determinations.

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 of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director stated that the petitioner had not established that the training is unavailable in the beneficiary's home country, and that the letter the petitioner submitted from a construction company in the beneficiary's home country was "self serving." The letter was written by the sales manager/building consultant of a construction company, who stated, "[T]o my knowledge, currently in Hungary there is no training in wood construction." This is the personal opinion of one individual and does not constitute evidence as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*). On appeal, counsel clarifies that the building consultant works for a company that specializes in wood construction in Hungary, and submits a printout from the company's website. That printout is accompanied by a partial translation, which states that "[i]n Hungary 860 lightweight construction buildings were built in 2002." Any document containing foreign language must be "accompanied by a *full* English translation which the translator has certified as complete and accurate." [Emphasis added]. 8 C.F.R. § 103.2(b)(3). Further, this website information does not address the existence or availability of training programs in Hungary.

The second basis for the director's denial is that the beneficiary would be engaged in productive employment. On appeal, counsel states that the beneficiary could not be engaged in any meaningful productive employment, since he would not have acquired the skills to do so. Counsel asserts that the beneficiary would, instead, be engaged in on-the-job training. As evidence, counsel provides information from the Department of Labor's *Occupational Outlook Handbook* stating that it takes three to four years of training just to become a carpenter, and the beneficiary will only be spending a year learning a variety of skills in addition to carpentry. Since the beneficiary would be performing many non-carpenter skills, such as installing drywall, roofing and framing, he is clearly not a carpenter apprentice, and so, the length of time it would take to train to be a carpenter is irrelevant. In the petitioner's April 29, 2003 response to the director's request for evidence, he states that he is offering "12 months of training/employment" and that 90 per cent of the beneficiary's training is on-the-job. The petitioner has not established that the beneficiary will not be engaged in productive employment.

Finally, the director determined that the training program is general in nature, without a fixed schedule, objectives or means of evaluation. The petitioner submitted a schedule of training with its motion to reopen, and it included general objectives and a means of evaluation. It did not, however, have a fixed schedule. Counsel asserts on appeal that *Matter of International Transportation,* 12 I&N 389 (Reg. Comm. 1967), allowed a general training program. Counsel did not take into account that the regulations have become more explicit over the years, and that the regulations now specifically state that a training program must have a fixed schedule. There is no indication in the proposed training of the amount of time that would be spent on each area of instruction, and while the schedule indicates the general percentage of time spent in classroom instruction, on-the-job training, and incidental employment, it lacks detail. The training schedule provides little detail about how the training would actually occur or what the structure of the training would be. The schedule would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations.

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.