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U.S. Citizenship
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Services

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FILE: WAC 04 153 50294 Office: CALIFORNIA SERVICE CENTER Date: **JAN 04 2005**

IN RE: Petitioner:
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:



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.

for Michael T. Kelly
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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is an equine hospital that seeks to employ the beneficiary as a trainee. The director determined that the beneficiary would be participating in training provided primarily by an academic institution. On appeal, counsel 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;
 - (5) Describes the career abroad for which the training will prepare the alien;
 - (6) 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
 - (7) 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; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the beneficiary would be receiving her training from an academic institution, in violation of Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii). The director based his decision on a letter from Dr. [REDACTED] Professor and Dean of Western University's College of Veterinary Medicine, submitted in response to the director's request for evidence. In this letter, Dr. Johnston stated that the petitioner is:

[A]n essential part of the College's plan to provide extraordinary education in clinical medicine to future veterinarians through strategic partnerships and alliances.

....

We partner with them through opportunities for our students in the Hospital and also through their surgeons' access to our clinical faculty, including boarded internists, surgeons, and pathologists. Their program, and ours, are [sic] enriched by the presence of international veterinarians who come to the Hospital for training.

The director appears to have misinterpreted this letter. The author did not state that her college provided training for the petitioner's interns, but rather that there was a supportive relationship with each party having access to some of the other's resources. On appeal, counsel submits a letter from the same individual clarifying her previous letter, stating specifically that her college does not offer post-graduate training. The petitioner has overcome the grounds of the director's denial, and the director's comments on the issue are withdrawn.

The petition may not be approved at this time, however. The director did not address the issues of whether the training program deals in generalities with no fixed schedule, involves productive employment beyond that which is incidental and necessary to the training or is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

The petitioner submitted a general training schedule, but it did not provide enough detail to meet the terms of the regulations. It is not clear from the information provided whether there is a classroom component to the training or how long would be spent on each area of training. The petitioner states that weeks eight through 52 of the training would be "in depth training in all aspects of veterinary medicine" and that the intern would rotate through two-week assignments among three surgeons and that the daily work schedule would vary. It is clear that due to the nature of the petitioner's business, it is difficult to state with certainty what activities an intern would be engaged in each day or each week. If the training program is structured solely around the interns assisting the practicing veterinarians, however, there is also an issue of whether the intern would be engaged in productive employment. The petitioner would need to provide a training program with significantly more detail in order to meet the terms of the regulations.

In addition, the director did not address the issue of whether the beneficiary already possesses substantial training in the field. The beneficiary appears to have had approximately six months of training in various clinics and hospitals specifically related to horses, in addition to three months in a "research unit" and one additional month of training in equine breeding.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the beneficiary has significant training and expertise in the area of proposed training, and whether the training program deals in generalities with no fixed schedule or involves productive employment beyond that which is incidental and necessary to the training degree, as well as any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 16, 2004 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.