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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



PUBLIC COPY

File: EAC 01 131 52738 Office: Vermont Service Center

Date: 06 NOV 2001

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)

IN BEHALF OF PETITIONER: Self-represented

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a service and installation firm which seeks to train the beneficiary as a tile and marble mechanic for a period of six months. The director determined that the petitioner had not demonstrated that the proposed training is not available in the beneficiary's home country or that the training is not for the purpose of recruiting the beneficiary for the ultimate staffing of domestic operations in the United States.

On appeal, the petitioner argues that the training is not available in the beneficiary's home country and is not training aimed at employing the beneficiary in the United States.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii) describes an H-3 trainee as:

Having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education in a training program that is not designed primarily to provide productive employment

....

8 C.F.R. 214.2(h)(7) provides a list of criteria for H-3 training programs. The petitioner must demonstrate that the proposed training is not available in the beneficiary's home country. A training program for an alien trainee may not be approved which is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. In Matter of Glencoe Press, 11 I&N Dec. 764 (Reg. Comm. 1966), the regional commissioner determined that the provisions of section 101(a)(15)(H)(iii) of the Act do not contemplate the recruiting and training of aliens for the ultimate staffing of United States firms in their domestic operations.

The petitioner argues that the beneficiary will be trained for employment abroad. The petitioner also asserts that the training is not available in the beneficiary's home country. Nevertheless, the petitioner has provided no evidence in support of either assertion. In view of the foregoing, it is concluded that the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.