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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

[redacted]

PUBLIC COPY

File: EAC 01 151 54556 Office: Vermont Service Center Date: 06 NOV 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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 sustained and the petition will be approved.

The petitioner is a country club which seeks to train the beneficiary in management for a period of seven 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 merely a repetition of previous training.

On appeal, the petitioner argues that it has complied with pertinent regulations.

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)(ii) 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 own country and that the proposed training is not on behalf of a beneficiary who already possesses substantial training in the proposed field of training. In Matter of Koyama, 11 I&N Dec. 424 (Reg. Comm. 1965), the regional commissioner determined that a petition for an H-3 trainee was properly denied because the training program was excessive in length, repetitious, and would consist principally of on-the-job experience.

Counsel argues persuasively that the beneficiary will be trained in the petitioner's proprietary and specialized methods and procedures. This training is unique to the petitioner and can only be received from the petitioner. The training will break new ground rather than enhance previously acquired skills because it is designed to prepare the beneficiary for a recruitment position abroad. In view of the foregoing, it is concluded that the grounds for denial have been overcome.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's decision is withdrawn and the petition is approved.