

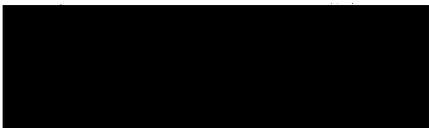
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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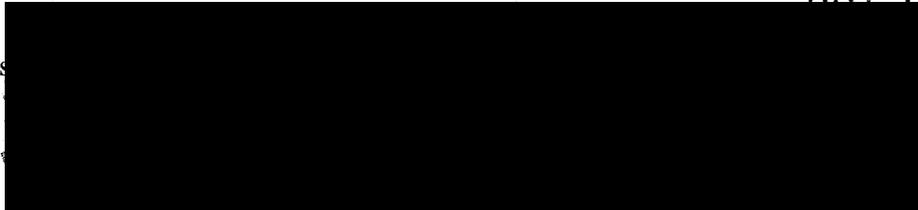
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: WAC 02 193 52924 Office: CALIFORNIA SERVICE CENTER

Date: OCT 16 2003

IN RE: Petitioner:
Beneficiaries:



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

PUBLIC COPY

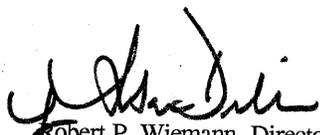
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


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 petitioner is a website and e-mail marketing company. It seeks classification of the beneficiaries as technical design and marketing representatives. The director determined that the petitioner failed to establish that the training includes an evaluation component; additionally the director found that the training is on behalf of a person who already possesses substantial training and expertise in the proposed field and that the petitioner has not established that there is a physical plant and sufficiently trained manpower to provide the training.

On appeal, the petitioner submits a brief stating that he already provided all of the information requested in order to meet the terms of the regulations. The petitioner also states that there was no original stipulation requiring evaluation of the trainees, but that an evaluation could be provided. The petitioner asserts that he has shown that he has an appropriate physical plant and experience to provide the proposed training.

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 program for a seven-day class, print-outs from the petitioner's website and the MyNetMarketer website, copies of some checks and invoices, information from the Sri Lankan government attesting that the beneficiaries have no criminal record and are approved to attend the training, and several other documents relating to the petitioner's prior business agreements.

The director determined that the petitioner failed to establish that the training includes an evaluation component. On appeal, the petitioner states:

It was not an original stipulation that there should be an evaluation of training; secondly, we could very easily evaluate each person's training to conform to the additional excuses made in the denial letter, even though there is no need to evaluate, since the training is to prepare each person for success, not failure. We can evaluate their progress as you see fit.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) specifically states, "A training program may not be approved which: Deals in generalities with no fixed schedule, objectives, or *means of evaluation.*" (Emphasis added). The petitioner asserts that there was no "original stipulation" of the evaluation component, but as the information is clearly provided in the regulations, the petitioner must be considered to have been on notice that without this element, a petition must be denied. The petitioner goes on to say that he can evaluate the progress of the beneficiaries as Citizenship and Immigration Services (CIS) sees fit. The petitioner still has not provided a means of evaluation, and it is not the responsibility of CIS to develop an evaluation process.

Additionally the director found that the training is on behalf of a person who already possesses substantial training and expertise in the proposed field. There is nothing in the record to support this determination. No evidence was submitted regarding the beneficiaries' background or experience and, therefore, it cannot be stated that they possess training or expertise in the field of the proposed training. The comments of the director are withdrawn regarding this ground for denial.

The director also determined that the petitioner had not established that there is a physical plant and sufficiently trained manpower to provide the training. In the petitioner's response to the director's request for additional evidence, the petitioner supplied copies of his and his partner's business cards, a copy of a rent check, and a copy of a phone bill. While this all indicates that the petitioner does have an office, it does not establish that it is an appropriate space for training ten people, as proposed. The petitioner could have submitted photographs of the space and the computer equipment to be used for training, a lease agreement stating the square footage of the office, or other means of establishing that the space and equipment are adequate for the proposed use. Without more persuasive evidence, the petitioner has not overcome this basis of the director's determination.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.