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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 02 232 55137 Office: CALIFORNIA SERVICE CENTER

Date: OCT 23 2003

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:



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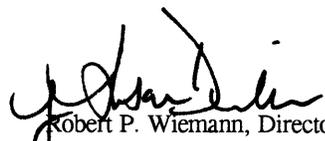
INSTRUCTIONS:

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 sustained. The petition will be approved.

The petitioner is a garment factory. It seeks classification of the beneficiary as a customer service manager trainee. The director determined that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation. The director also found that the petitioner failed to establish that the beneficiary will not engage in productive employment and that the petitioner has a classroom setting and the physical plant to conduct the training. In addition, the director stated that the petitioner had not established that the beneficiary could not receive similar training in her home country.

On appeal, counsel states that the director failed to consider the evidence submitted and that the decision lacked meaningful analysis of the evidence. Counsel asserts that evidence was submitted to show a detailed training program, which could not be found in the beneficiary's home country. Additionally, counsel states that the petitioner submitted information showing that the beneficiary would not be engaged in productive employment beyond that which is incidental to the 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 training program schedule showing a twenty-one month program covering each major area of the petitioner's customer service operation; articles and information about the petitioner's unique approach to the garment business; articles about the petitioner's founder and owner; a variety of business documents such as tax forms, articles of incorporation, etc.; and the petitioner's merchandise catalogs.

The director determined that the information submitted in response to the request for evidence did not establish the beneficiary's eligibility. He found that the training program dealt in generalities with no fixed schedule, objectives or means of evaluation. Specifically, he stated, "Without knowing how long the courses will last or their beginning and ending times, it can not be determined with any certainty that the training program can be completed within the time requested by the petitioner." The training program submitted with the original petition (Exhibit 2) gives specific dates for each phase of the training, and the time that the beneficiary is expected to spend in training each day, as well of the title of each trainer. The names of the staff are provided in Exhibit 4. The petitioner provided all of the information that the director states is missing, thereby negating the basis for the director's decision. The decision of the director relating to this issue is withdrawn.

The next basis for the director's denial is that the petitioner failed to establish that the beneficiary would not engage in productive employment beyond that which is incidental to the

training. In a letter submitted with the petition, the petitioner stated that 80% of the training program would be academic instruction, and that productive employment would encompass approximately 10% of the program. In the response to the director's request for evidence, the petitioner stated that the beneficiary would be "engaged in a very limited amount of productive employment incidental to the training program. This will only happen if the instructor is giving the Trainee [sic] practical scenarios that she has to participate in." The director stated, "Merely stating that the trainee will be engaged in a very limited amount of productive employment incidental to the training program does not make it so." It is not clear what further proof the director would require in order to determine that the petitioner had established that the training program is primarily instructional rather than productive employment. The director's comments on this issue are withdrawn.

The director also stated that the petitioner had not established that it had the appropriate physical plant to conduct the training. In the request for evidence, the director did not request photographs to establish that the space was available, but rather simply requested evidence, such as "annual reports, company brochures, etc." The petitioner submitted news articles, company brochures, the financial statement and tax return, and a variety of other documents. Taken together, these documents establish that the petitioner employs approximately 1,000 people who work in a 200,000 square foot facility, with annual sales in the tens of millions of dollars. It appears that there is space for one individual to be trained in these facilities.

The director's final ground for denial is that the petitioner did not show that the same type of training is unavailable in the beneficiary's home country. The beneficiary could not receive the training relating to the petitioner's unique manner of business, which will allow her to become the petitioner's overseas customer service manager, in her home country. The petitioner manufactures t-shirts in a non-sweatshop environment, with high wages and benefits for its workers. An article submitted by the petitioner cites statistics from the Department of Labor, which "estimates that more than half of the 22,000 US sewing factories violate minimum-wage and overtime laws, and 75% violate health and safety laws." Clearly, the petitioner operates differently from the majority of garment manufacturers, and these practices can be best learned by receiving training in the petitioner's facility. In the response to the request for evidence, the petitioner stated, "We are striving to pioneer a political movement of human rights. We want this to be translated into our future branch offices

abroad. This can only be properly implemented if we train future managers, who will be placed in other countries, in our US facility." The proposed training program will provide a thorough knowledge of the petitioner's particular standards and practices, in anticipation of the beneficiary working for the petitioner overseas. In the event that the petitioner does not open another overseas office, the skills acquired during this training would assist the beneficiary in finding a position with another company in her home country. The comments of the director on this issue are withdrawn.

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 sustained that burden.

ORDER: The director's January 8, 2003 decision is overturned. The petition is approved.