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U.S. Citizenship
and Immigration
Services



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FILE: SRC 04 020 50703 Office: TEXAS SERVICE CENTER Date: DEC 13 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:

SELF-REPRESENTED

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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a church that seeks to employ the beneficiary as a trainee. The director determined that the training consisted of primarily on-the-job training. The director stated that the petitioner did not establish that it had a valid organized training program or that the training was unavailable in the beneficiary's home country.

On appeal, the petitioner submits a letter and supporting documentation.

Section 101(a)(15)(H)(iii) of 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 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.

On appeal, the petitioner states that the training that it has described as on-the-job is similar to what other organizations would teach in a classroom setting. The petitioner provides a complete curriculum guide and supplemental materials in order to establish that the training is detailed. The petitioner asserts that it has a particular theory of ministry and method of operation that could not be found in other ministries of a similar nature. The petitioner states that it does not recognize the training received in other Christian ministries, and that the purpose of the training is to equip the beneficiary to open one of its facilities in the beneficiary's home country.

The director found that the proposed training consists of primarily on-the-job training. The petitioner stated that the beneficiary would be training to be pastor of a church/rescue mission/drug and alcohol rehabilitation center. In response to the director's request for evidence, the petitioner stated that the training would consist of approximately five hours of classroom instruction per week, and 10 to 12 hours of on-the-job training per day. On appeal, the petitioner states that the beneficiary would be observing "trained staff members in the operation of our ministry. . . During these observations, the trainee is taking notes, asking questions, making observations – in other words, performing the same activities performed in any classroom setting." The AAO does not concur that these activities equate to those typically found in a classroom setting. In some settings, however, on-the-job training is the only method of training that is practical to impart understanding of the functions of an organization. The AAO finds that on-the-job training is suitable in the instant matter, since the activities of the petitioner and its own style of ministry are not areas that could be solely learned through a classroom education.

The director stated that the petitioner did not establish that the proposed training is unavailable in the beneficiary's home country. The petitioner stated that it is a Christian church unaffiliated with any particular denomination and that it has a specific theory of ministry and a particular procedure regarding its operations. The goal of the training is for the beneficiary to develop the petitioner's facility in his home country. The AAO finds that petitioner established that it has a specialized approach to its program that could not be gained by any general training with another Christian organization. The proposed training could not be gained in the beneficiary's home country; the director's remarks on this issue are withdrawn.

The director also found that there was no valid organized training program. The AAO concurs. There is no evidence that the training program deals with a fixed schedule, objectives, or means of evaluation. There is no specific schedule and none of the topics in the training include any additional information regarding the length of time to be spent on each topic, who would be providing the training, or what the beneficiary would actually be doing for each segment of training. It does not provide any specifics to establish the means of evaluation or that the program does not deal in generalities.

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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.