

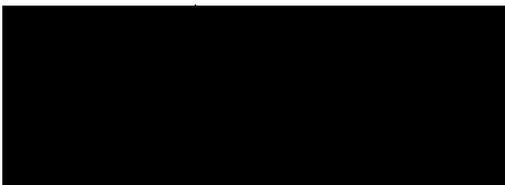
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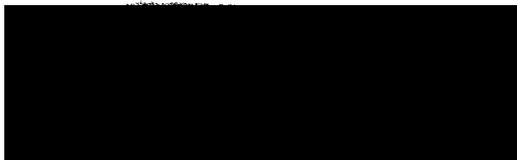
D2

FILE: EAC 04 260 54088 Office: VERMONT SERVICE CENTER Date: DEC 15 2005

IN RE: Petitioner: [Redacted]
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)

ON BEHALF OF PETITIONER:



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 luxury inn that seeks to employ the beneficiary as a trainee. The director determined that the petitioner did not establish that the training was unavailable in the beneficiary's home country. The director also found that the evidence does not describe the means of evaluation for the training or establish that the petitioner has sufficiently trained manpower to provide the training specified. The director stated that the training is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

On appeal, counsel 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 denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, counsel states that the training is not available in the beneficiary's home country, and provides two letters to support this claim. Counsel also states that the proposed training does not utilize significant resources of the petitioner.

Counsel submits two letters on appeal; one is from the general manager of a hotel in the beneficiary's home country, and the other is from the president of the Massachusetts Lodging Association. Both letters state that

the proposed training is not available in the beneficiary's home country. Neither letter, however, provides any corroborating evidence, references or significant details establishing that high-quality restaurant training is not available in the beneficiary's home country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). There is no information in the proposed training schedule to indicate that the program provides any level of training beyond that which could be acquired in a culinary school or a fine dining restaurant. The petitioner has not established that the proposed training is unavailable in the beneficiary's home country.

The director also found that the evidence does not describe the means of evaluation for the training. On appeal, counsel does not address this issue. There is no evidence in the record regarding how the beneficiary would be evaluated, as required by the regulation.

The director determined that the petitioner did not establish that it has sufficiently trained manpower to provide the training specified, as required by the regulation. On appeal, counsel states that the proposed training "does not utilize enormous resources of our organization." This statement does not adequately rebut the director's concern regarding the staff that would be providing the training and their qualifications.

Finally, the director stated that the training is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The beneficiary has training in accounting, and as an assistant waiter and stewarding team leader at a large hotel in her home country. While the proposed training does encompass these areas, it also includes many areas of food preparation, management and safety issues that do not appear to be a part of the beneficiary's previous training. The AAO finds that the beneficiary does not already possess substantial training and expertise in the proposed field of training.

Beyond the decision of the director, the AAO finds that there is no evidence that the training program deals with a fixed schedule, objectives, or means of evaluation. The schedule provided with the petition is general, broken into three-month segments with a variety of topics for each segment. None of the topics in the training schedule includes any additional information beyond a title. For instance, the topics for months 7-10 are: purchasing policies; food standards and specification; market sources; purchase orders; bidding; weekly food purchase; requisitions and issues; ordering and receiving policies; receiving; storage of leftovers; dry storage; storeroom arrangement; inventory; and security evaluating suppliers. The schedule gives no information regarding what the beneficiary would actually be doing for this three-month period or how she would be training. It does not provide any specifics to establish that the program does not deal in generalities. In addition, the AAO notes that the subjects of the training for Months 18-20 and Months 20-22 are identical. Without a breakdown of training to be provided in each segment, the duplicate time period on the schedule does not provide further training. For this additional reason, 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. § 1361. The petitioner has not sustained that burden.

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