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**U.S. Citizenship  
and Immigration  
Services**

*D2*



FILE: WAC 07 800 08282 Office: CALIFORNIA SERVICE CENTER Date: APR 02 2008

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, 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 dental office with a contractual agreement with Apadana Hospital in Iran, the beneficiary's employer and sponsor. Under the terms of the agreement, the petitioner is to train the beneficiary so that at the end of the training the beneficiary is recognized as a licensed orthodontist in the State of Florida. According to the agreement, the sponsor will pay the petitioner \$45,000 for the training and an additional 20% of the total compensation or \$9,000 if, at the end of the training, the beneficiary is recognized as a licensed orthodontist by the state of Florida.<sup>1</sup> According to the Form I-129, the proposed training program will last for a period of one year. The petitioner, therefore, endeavors to classify the beneficiary as nonimmigrant worker trainees pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis of her determination that the petitioner failed to establish that the training will benefit the beneficiary in pursuing a career outside the United States.

On appeal, counsel contends that the director erred in denying the petition.

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, the following:

- (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;

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<sup>1</sup> In his appeal brief, counsel references the training agreement and states that the petitioner will be paid \$40,000. However, the training agreement states that the total compensation will be "Forty-Five Thousand Dollars (\$45,000)."

- (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.

In its initial filing, the petitioner did not submit a detailed description of its training program. On May 10, 2007, the director requested evidence from the petitioner including a detailed description of the training to be provided and listing the number of full-time trainers on the petitioner's staff and the number of hours that will be devoted to classroom instruction, on-the-job training, and productive employment. In response to the director's request for evidence, counsel submitted a copy of the petitioner's training agreement with Apadana Hospital, the beneficiary's employer in Iran. At page 2 of the training agreement, the "Training Program" portion states the following:

Training program is defined as an educational and practical training offered by the trainer to the trainee in such manner, condition and form that will maintain the training program as one that will cause the trainee at the conclusion of the training program to be recognized as a licensed orthodontist by the State of Florida, or any other state or jurisdiction of the U.S. where the training programs take place.

This description is the extent of what counsel and the petitioner have provided with regards to the training that the petitioner will provide to the beneficiary. Although counsel asserts that the petitioner has trained individuals in the past, counsel does not provide the names of previous trainees. In addition, the record of proceeding does not contain a syllabus, an outline, or any other document that describes the petitioner's training program in further detail. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

According to the agreement, the trainer is defined as a U.S. board licensed orthodontist and the trainee is defined as a foreign licensed dentist. In his response to the director's request for evidence, counsel provided copies of internet directories for dentists which list the petitioner's name as evidence that the petitioner is a member of the board of dentistry in the State of Florida and certified to practice orthodontics. Counsel submitted copies of photographs of the beneficiary next to a patient with dental instruments in the beneficiary's hands as evidence that the beneficiary is a foreign licensed dentist. The

record of proceeding contains copies of neither the petitioner's nor the beneficiary's diplomas in dentistry and licenses to practice dentistry in the State of Florida or Iran. Also, the record contains no official documentation of the petitioner's credentials in orthodontics.

Under the terms of the training agreement, the beneficiary's employer is her sponsor and will pay the petitioner total compensation of \$45,000 for the training and a bonus of 20% of the total compensation if, at end of the training program, the beneficiary is recognized as a licensed orthodontist in the United States. The sponsor is responsible for the cost of training, the beneficiary's compensation, the beneficiary's travel and housing expenses, and the beneficiary's books and materials. In addition, the training agreement allows for a termination of the agreement if both parties expressly agree to the termination, and it states that the "failure of the sponsor to make proper and orderly payment is recognized as a breach." Damages in case of a breach are addressed in Section IX of the training agreement, which states the following:

The parties recognize that based on the nature of the contract and the respective needs of the parties, in case of breach by the sponsor, the sponsor must provide payment for the total compensation reduced by any amount, which the sponsor has previously provided to the trainer. In the case of breach by the trainer, the trainer must remit the total amount received by the sponsor reduced by the fees or other expenses incurred by the trainer in filing before the state authorities, or other government agencies, with the caveat that such payments must have been completed on behalf of the trainee, and not for the benefit of the trainer.

Although the training agreement addresses termination, breach, and damages in case of breach with regards to the petitioner and the sponsor, the agreement fails to mention how a termination or breach would affect the beneficiary.

The director denied the petition on August 15, 2007. The AAO agrees with the director's finding that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director found that the petitioner had failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to submit a statement which describes the career abroad for which the training will prepare the alien.

In her denial, the director stated that:

The petitioner has not established that the knowledge and skill gained through the training would be used outside the United States. No evidence has been submitted to establish that the specialized training can or will be used outside the United States.

On appeal, counsel states:

The beneficiary, as the evidence proves, intends to receive sufficient training in the field of orthodontics for her to be qualified to attain a license under the laws of the State of Florida as a licensed orthodontist. The training is based on the agreement between the foreign employer and the petitioner. The training agreement mandates the petitioner to train the beneficiary. In consideration, the foreign employer of the beneficiary is to compensate the petitioner to the tunes [sic] of forty thousand dollars.<sup>2</sup> The size of the compensation in addition to the requirement for the beneficiary to leave the U.S. prove that the beneficiary will receive a higher position when she returns to her foreign country where she is employed as a dentist by the foreign employer. Therefore, the training will improve the career of the beneficiary.

Counsel states that, “as the evidence proves, [the beneficiary] intends to receive sufficient training in the field of orthodontics for her to be qualified to attain a license under the laws of the State of Florida as a licensed orthodontist,” but he does not provide evidence that an orthodontics license exists under the laws of the State of Florida, that the petitioner is qualified to train the beneficiary for such a license, that the beneficiary will be able to obtain such a license after the training, or that such a license will allow her to practice orthodontics in Iran. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Pursuant to Florida Statute Chapter 466.006(1): “Any person desiring to be licensed as a dentist shall apply to the department to take the licensure examination and shall verify the information required on the application by oath.” Florida Statute Chapter 466.003(7) defines department as the Department of Health. Therefore, in order to practice dentistry in Florida, all dentists must take the licensure examination. Pursuant to Florida Statute Chapter 466.006(3) foreign dental school graduates are required to satisfy one of the following prior to taking the licensure examination:

- (a) Completes a program of study, as defined by the board by rule, at an accredited American dental school and demonstrates receipt of a D.D.S. or D.M.D. from said school; or
- (b) Completes a 2-year supplemental dental education program at an accredited dental school and receives a dental diploma, degree, or certificate as evidence of program completion.

These are the requirements that all foreign educated dentists must meet in order to practice dentistry in Florida. However, the training in question deals with orthodontics. According to the American Dental Association, orthodontics is considered a dental specialty.<sup>3</sup> All dental specialists in the State of Florida must meet the requirements of Florida Statute Chapter 466.006 “Examination of Dentists” and Chapter 466.0282 “Specialties.” Florida Statute Chapter 466.0282 requires the following of specialists:

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<sup>2</sup> The training agreement states that total compensation will be \$45,000.

<sup>3</sup> See <http://www.ada.org/prof/ed/specialties/definitions.asp>.

- (1) A dentist licensed under this chapter may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the dentist:
  - (a) Has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and:
    - (1) Is eligible for examination by a national specialty board recognized by the American Dental Association; or
    - (2) Is a diplomate of a national specialty board recognized by the American Dental Association; or
  - (b) Has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association.

The record of proceeding does not contain a copy of a Florida dentistry license for the beneficiary and counsel does not assert that the beneficiary has such a license. Therefore, before the beneficiary can be recognized as a licensed orthodontist in Florida, she must first obtain a license to practice dentistry under Florida Statute Chapter 466.006. Prior to taking the licensure examination, as a foreign educated dentist the beneficiary has the additional requirement of completing a program of study at an accredited dental school in order meet one of the requirements of Florida Statute Chapter 466.006(3).<sup>4</sup> There is no evidence in the record of proceeding that the beneficiary has met the requirements of Florida Statute Chapter 466.006(3).

Pursuant to Florida Statute Chapter 466.0282(1), a dentist must complete a program approved by the American Dental Association and the Commission on Dental Accreditation. There is no evidence in the record that the petitioner's training program has been approved by the American Dental Association and the Commission on Dental Accreditation. Nor is there evidence that the beneficiary is eligible to take an examination by a national specialty board recognized by the American Dental Association or that she is a diplomate of a national specialty board recognized by the American Dental Association.

As noted previously, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to submit a statement which describes the career abroad for which the training will prepare the alien. The training agreement describes the training program as "one that will cause the trainee at the conclusion of the training program to be recognized as a licensed orthodontist by the State of Florida." However, the petitioner has not established how its program or the beneficiary will meet the various requirements for practicing orthodontics in the State of Florida. Furthermore, the State of Florida does not issue a license in orthodontics; it issues a license to practice dentistry. In order for a dentist to practice orthodontics in Florida, she must meet the licensing requirements that all dentists must meet as well as the additional requirements for specialties. Finally, the training agreement states that the purpose of the agreement is to "promote medical treatment of the patients of the sponsor who are in need of orthodontistry," but there is no evidence that the beneficiary will be able to practice orthodontics in Florida or Iran at the conclusion of the training.

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<sup>4</sup> Counsel has not provided evidence of the beneficiary's dental education and because counsel states that the beneficiary practices dentistry in Iran, the AAO assumes that she was educated outside of the United States.

Accordingly, the petitioner has not satisfied the criteria at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

Beyond the director's decision: (1) the petitioner has failed to demonstrate that the proposed training program is unavailable in the beneficiaries' home country; (2) the petitioner has failed to demonstrate that the beneficiary would not engage in productive employment; (3) the petitioner has failed to demonstrate that its proposed training program does not deal in generalities; (4) the petitioner has failed to set forth the proportion of time that would be spent, respectively, in classroom instruction and in on-the-job training; and (5) the petitioner has failed to demonstrate that it has the physical plant to provide the proposed training program. The petition may not be approved for these additional reasons.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration that the proposed training is not available in the alien's own country, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner to submit a statement which indicates the reasons why the training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States.

In his appeal brief, counsel claims that the training is not available outside of the United States because "pursuant to the laws of the State of Florida, a dentist akin to the beneficiary must receive such training within the jurisdiction of the State of Florida." Counsel has not provided evidence that Florida laws require or even allow for such training in the State of Florida. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also states that "the field of orthodontics in the foreign country is not mature enough to provide the training to the beneficiary in the same way as she would receive under the supervision of the petitioner" and submits a copy of a letter from Dr. [REDACTED], General Manager of the Apadana General Hospital in Iran. Dr. [REDACTED] states:

First, ICAT Based on new technology for orthodontics that influenced dental science, this training is only [in existence] in [the] U.S.A. Second, in the field of orthodontics in Iran there [are a] limited number of orthodontists working in this country. Therefore, this training that is offered by your clinic for [the beneficiary] is chief of the reasons that [the beneficiary] to undertaken [sic] the task of such especialiry [sic] and training of our dentists in Apadana Medical Centre.

Dr. [REDACTED] is the first to mention that the beneficiary's training will involve isotope-coded affinity tags (ICAT) and he does not provide a definition for ICAT. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). According to BioInfoBank Library, ICAT is a "method for quantitative proteomics based on differential isotopic labeling, sample digestion and mass spectrometry.

The method allows the identification and relative quantification of proteins present in two samples...”<sup>5</sup>  
Merriam-Webster’s Medical Dictionary defines proteomics as

a branch of biotechnology concerned with applying the techniques of molecular biology, biochemistry, and genetics to analyzing the structure, function, and interactions of the proteins produced by the genes of a particular cell, tissue, or organism, with organizing the information in databases, and with applications of the data (as in medicine or biology).<sup>6</sup>

Dr. ██████ does not explain how training devoted to the study of proteins relates to the practice of orthodontics or how such training will enable the beneficiary to obtain a license to practice orthodontics in Florida and ultimately, practice orthodontics in Iran. The record does not establish that the petitioner utilizes ICAT technology in her practice. Further, the record does not establish the petitioner’s competency in this area, her ability to train in this area, or her authority to do so. Also, the record does not provide any details about how ICAT technology would be included in the training. Therefore, Dr. ██████’s statement is not probative.

The petitioner has submitted no persuasive evidence that the training offered in this program is not available in the Iran. Counsel’s statement with regards to the practice of orthodontics in Iran is not persuasive given that Dr. ██████’s letter states that there are orthodontists working in Iran. Nor has the petitioner explained how, or which portions of, its training are different from those that the beneficiary would learn in Iran. Finally, the AAO notes that the fact that a training program offered by a United States employer is better than a similar program in a foreign country does not establish eligibility under this regulation.

Accordingly, the petitioner has not satisfied the criteria at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

The petitioner has failed to demonstrate that the beneficiary would not engage in productive employment beyond that necessary and incidental to the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

As mentioned above, the petitioner did not submit a syllabus, an outline, or any other document that describes the petitioner’s training program beyond the paragraph in the training agreement. Therefore, the AAO is unable to determine whether the beneficiary will engage in productive employment during the training.

Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(3), and approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(E).

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<sup>5</sup> See <http://lib.bioinfo.pl/pmid:17631686>.

<sup>6</sup> See <http://dictionary.reference.com/browse/proteomics>.

The petitioner has failed to demonstrate that its proposed training program does not deal in generalities. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a proposed training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Again, the petitioner did not submit a syllabus, an outline, or any other document that describes the petitioner's training program beyond the paragraph in the training agreement. The description of the training program is vague and the record of proceeding does not contain a fixed schedule. The record of proceeding does not establish that the beneficiary will be able to take, let alone pass, an examination for a license to practice orthodontics in Florida. Therefore, the petitioner has not demonstrated a viable means of evaluation.

The AAO notes that the director afforded the petitioner the opportunity to supplement the record with a more detailed description of its proposed training program in her May 10, 2007 request for additional evidence. In response, counsel submitted a copy of the training agreement. No additional documents were submitted on appeal. CIS is left with little indication of what the beneficiary will actually be doing on a day-to-day basis. While the petitioner is certainly not required to provide a daily itinerary for a one-year program, the petitioner has provided little information beyond a vague, generalized description.

Accordingly, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the record fails to demonstrate the existence of a training program that does not deal in generalities.

The petitioner has failed to set forth the proportion of time that would be spent, respectively, in classroom instruction and in on-the-job training. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires the submission of a statement which sets forth the proportion of time that would be spent, respectively, in classroom instruction and in on-the-job training.

As was the case under 8 C.F.R. § 214.2(h)(7)(ii)(A)(3)), the petitioner did not submit a syllabus, an outline, or any other document that describes the petitioner's training program beyond the paragraph in the training agreement and did not mention how the beneficiary's time would be divided between classroom instruction and on-the-job training.

Accordingly, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(ii)(B)(3).

For the reasons set forth in the preceding discussion, the AAO finds that the petitioner has failed to overcome the director's denial of the petition. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In 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. Here, that burden has not been met.

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