



U.S. Department of Justice

Immigration and Naturalization Service

DH

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



PUBLIC COPY

File: LIN 01 011 52060 Office: Nebraska Service Center

Date: 15 NOV 2001

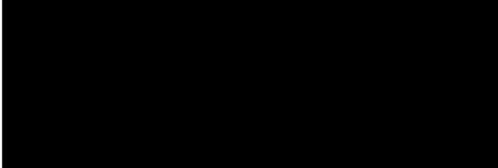
IN RE: Petitioner:
Beneficiary:



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)

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



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 the Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to train the beneficiary in specialty hair care and styling for a period of six months. The director determined that the petitioner had not established that the proposed training is not available in Japan.

On appeal, counsel argues that the proposed training is needed because the training program is a very good one and that the beneficiary will experience a diversity of ethnic hair which is not present in Japan.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii) describes an H-3 trainee as:

Having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education in a training program that is not designed primarily to provide productive employment
....

8 C.F.R. 214.2(h)(7)(ii) provides a list of criteria for H-3 training programs. The petitioner must include a statement indicating the reasons why such training cannot be obtained in the alien's country. A training program may not be approved which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. In Matter of Koyama, 11 I&N Dec. 424 (Reg. Comm. 1965), the regional commissioner determined that a petition for an H-3 trainee was properly denied because the training program was excessive in length, repetitious, and would consist principally of on-the-job experience.

Counsel argues that the training sought is not available in Japan because it deals with a diversity of hair types. The petitioner has not sufficiently explained why the experience of diversity of hair types would be of great significance if the beneficiary intends to practice the occupation in Japan.

The training program appears excessive and repetitious. The beneficiary appears to be a hair stylist already. The training program appears to be repetitious, excessive in length, and principally on-the-job training. In view of the foregoing, it is concluded that 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. 361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.