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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 01 196 50694

Office: Nebraska Service Center

Date: 15 MAR 2002

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)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

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, 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 is a religious organization which seeks to train the beneficiary in religious discipleship for a period of 28 months. The director determined that the petitioner had not provided a structured training program. The director also found that the proposed training would consist largely of on-the-job training. Finally, the director found that the petitioner had not shown that the beneficiary's proposed training is not available in the beneficiary's home country.

On appeal, the petitioner has provided additional information regarding the beneficiary's training. The petitioner also argues that training is not available in the beneficiary's home country.

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 demonstrate that the training program does not merely deal in generalities. It must be shown that the proposed training is not available in the beneficiary's home country. 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.

The petitioner has not sufficiently established that training is not available in Australia. In addition, the beneficiary appears to have had training in both the United States and Australia and requests 28 additional months of training. The petitioner has not shown that the training has a specific goal. Finally, the training appears to consist primarily of 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.