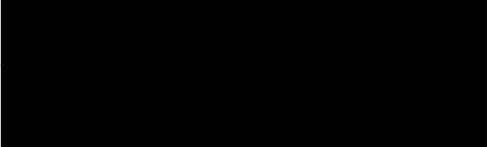


D4

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street NW  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

**PUBLIC COPY**



File: SRC 01 189 50206 Office: Texas Service Center

Date:

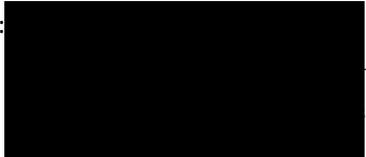
AUG 18 2003

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:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in therapeutic rehabilitative services. It seeks classification of the beneficiary as a physical and occupational therapy trainee for 22 months. The director determined that the conditions cited in 8 C.F.R. § 214.2(h)(7)(ii)(A)(1), (2), (3), or (4), have not been demonstrated. The director also determined that the description of the training program stated in 8 C.F.R. §214.2(h)(7)(ii)(B)(1) has not been clearly established. Moreover, the director determined that the restrictions mentioned at 8 C.F.R. § 214.2(h)(7)(iii)(C), (D), (E), (F), and (G), prohibit approval of the petitioner's training program.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (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.

Counsel states on appeal that the Bureau incorrectly concluded that the training proposed for the beneficiary would not benefit her

abroad. Counsel states that the beneficiary's career advancement had been hindered as a result of her lack of advanced training in this field, specifically, training related to the state-of-the-art equipment and the latest treatments available. Counsel goes on to state that the equipment and practices available here are not in place abroad. Counsel also states that the beneficiary will have unique, specialized knowledge in modern techniques and treatments not available in her native country of Colombia. Counsel states that the petitioner does not currently have an office, or plant abroad and plans on expanding its operations. However, the petitioner has not provided a detailed plan regarding the building of such a facility in the beneficiary's country. Although it appears that the proposed training is not available in the beneficiary's native country of Colombia, the petitioner has not shown how this training will benefit the beneficiary in pursuing a career abroad. Counsel states that Colombia does not have the facilities and medical equipment necessary for an intensive, modern, and advanced physical therapy training program. The petitioner has not shown how the training will benefit the beneficiary in pursuing a career outside the United States.

Counsel states that the Bureau incorrectly concluded that the amount of productive employment is beyond that incidental to the training program. Counsel asserts that 50 percent of the training program will be devoted to direct academic instruction. Counsel also states that the schedule may be subject to change, as the beneficiary will also attend selected conferences on subjects related to the field. Counsel goes on to state that the beneficiary will generally act as an observer and engage in productive employment incidental to the training program to give her practical training with the procedures and treatments offered at the facility.

The record, as it is presently constituted, contains a copy of the training program describing the type of training and supervision to be given and the structure of the training program. The training will take place at the facility and the petitioner's executive personnel and his subordinates will provide the training. Upon review, the petitioner has established that the beneficiary will be engaged in productive employment that is beyond that which is incidental and necessary to the training. Counsel states that given the overwhelming shortage of qualified, trained occupational therapists, many institutions, like the petitioner, will not be able to carry out their activities if they cannot staff its enterprises with qualified, trained practitioners. Counsel also states that many health-related entities have begun to recruit abroad, pay for all expenses associated with the recruitment and relocation, and pay a nominal salary throughout the training program. Counsel explains that, while it is true that the beneficiary will be employed in a trainee capacity, this does not in anyway detract from the fact that training for a prospective position constitutes employment. The petition indicates that the

beneficiary will be paid \$18,000 per year. Counsel states that the beneficiary will be employed in a trainee capacity. Therefore, the petitioner has not established that the beneficiary will not be engaged in productive employment. Further, the petitioner has not established that the training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States.

The petitioner states that the beneficiary holds a bachelor degree in physical therapy from Universidad Manuela Beltran in Bogota, Colombia and has more than five years of experience working for various institutions in Colombia in the physical and occupational therapy field. The regulations state that a training program may not be approved that is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The petitioner has not shown that, other than instructing about the latest state-of-the-art equipment, the training program will not cover those topics in which the beneficiary already has expertise.

Counsel claims that the Bureau incorrectly concluded that the beneficiary is to be placed in the petitioner's normal course of operations alongside its regular workers. The description of the training to be performed states the training will be conducted through direct instruction and supervised practical training. The petitioner does not indicate that the beneficiary's training will take place separate and apart from its regular employees. Therefore, the petitioner has not shown that the beneficiary will not be placed in a position that is in the normal operation of the business and in which citizens and resident workers are regularly employed.

In nonimmigrant 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.