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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE: WAC 03 081 54242 Office: CALIFORNIA SERVICE CENTER

Date: **DEC 29 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:



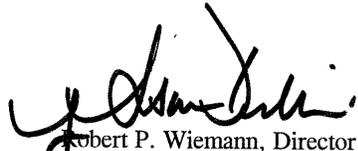
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a trainee. The director determined that the petitioner did not establish that the training is unavailable in the beneficiary's home country.

On appeal, counsel submits a brief stating that the director erred in his decision and that the proposed training is unavailable in the beneficiary's home country. Counsel submits additional documentary evidence to support this assertion.

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.

The record, as it is presently constituted, contains: a training program schedule showing a two-year program; a letter from the beneficiary's home church stating that there is no similar training in that country; the beneficiary's degree; an information manual regarding the training program; various documents providing information to the students of the training; a copy of the beneficiary's passport, visa, Form I-20, and I-94 card; the beneficiary's employment authorization document; a letter from the coordinator of the corresponding training program in the beneficiary's home country and a curriculum for that training; documents regarding the beneficiary's previous application for change of status to H1B classification; and several documents regarding the tax-exempt status of the petitioner.

The director determined that the petitioner failed to establish that the training is unavailable in the beneficiary's home country.

The director requested additional evidence in 11 areas, and then determined that the information submitted in response to one of the requests did not establish the beneficiary's eligibility. He found that the petitioner did not establish that the training is unavailable in the beneficiary's home country. The director quoted the petitioner's response and found that it was not persuasive. The director did not directly reference the letter from Tanudjaja and Santoso Gunawan (exhibit 3 in the petitioner's response to the request for evidence), elders in the beneficiary's church in her home country, who state:

It is the Church of God in Semanrang's desire that [the beneficiary] can be training in Biblical Truth and Gospel Service [sic] in the English language. We recognize that English is the primary language used internationally for God's work; furthermore, there is no similar English Speaking Training [sic] like the FTTA [the proposed training] available in Indonesia who uses the Indonesian language as its official language [sic].

In his decision, however, the director notes that the beneficiary received her bachelor's degree in engineering in the United States, and, therefore, appears to be fluent in English.

The petitioner does not give any other reason for the beneficiary to receive her training in the United States other than to receive the training in English.

On appeal, counsel submits a statement from the petitioner describing the differences between the proposed training program and the one available in the beneficiary's home country. In addition, counsel submits a copy of the training program from the beneficiary's home country to support the petitioner's statements. The differences in the program are significant in the area of approach to outreach ministry and organizing.

Citizenship and Immigration Services regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The evidence submitted prior to the appeal only indicates that there is no similar English-language program in the beneficiary's home country. The petitioner did not establish that there was no other similar program at all, however. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Beyond the decision of the director, the AAO notes that appendix 7 to the petitioner's response to the director's request for evidence states that the beneficiary began study in the training program on February 17, 2003, despite the fact that the instant petition had not been approved.

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.