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U.S. Citizenship
and Immigration
Services



FILE: SRC 02 207 52567 Office: TEXAS SERVICE CENTER

Date: **JAN 22 2004**

IN RE: Petitioner:
Beneficiary:



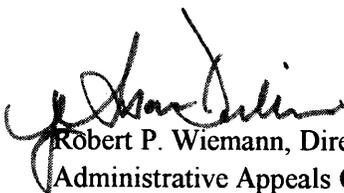
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a school and training center. It employs nine people and has a gross annual income of \$327,000. It seeks classification of the beneficiary as an apprentice headmistress for a period of two years. The director determined that the proposed training deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner asserts that the director erred in making her decision and that the petitioner established that the training program does not deal in generalities.¹

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:

(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;

¹ The AAO notes that Curtis A. Littman submitted a Form G-28 in April 2003 indicating that he was the petitioner's representative of record. However, the petitioner did not sign the Form G-28. Only a petitioner or its attorney may file an appeal. See 8 C.F.R. § 103.2(a)(3). As the Form G-28 does not conform to regulatory requirements, CIS will not recognize Mr. Littman as the petitioner's representative of record, and the petitioner is considered to be self-represented.

- (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 letter from the petitioner outlining the training program and the beneficiary's background; a description of the apprenticeship program; a list of the trainers and their backgrounds; and a brochure about the petitioner.

In the letter submitted with the petition, the petitioner described the training program:

1. The Ambleside Apprenticeship Program is a two year program which involves the following:
 - A one year concentration of the philosophy and practice of Charlotte Mason Education which includes:

- a. Studying and reading of the philosophy from primary source materials and current educational literature (approximately ten-fifteen hours per week).
 - b. Observing and instructing in classrooms from kindergarten – eighth grades (approximately 10-15 hours per week).
 - c. Completing specific assignments from research projects to developing lessons [sic] plans, examination questions.
 - d. Involving oneself in the life of the school from teacher in-services, parent meetings, and school wide activities.
- A one-year application of the philosophy and practice as a classroom teacher which includes:
 - a. Participating in the direct role of a classroom teacher.
 - b. Preparing a classroom and lessons for one school year.
 - c. Bearing the primary responsibility as a classroom teacher in all his/her roles and responsibilities.

The director requested additional evidence, in part, “Submit a breakdown of the number of actual hours in classroom instruction and the number of hours in practical training. . . . Submit a copy of the training program.” The petitioner responded:

The apprenticeship program for [the beneficiary] will include 26 hours per week of student teaching under the direction of a master teacher, 6 hours per week of individual training, 5 hours per week of directed study, and 2 hours per week in staff training meetings. Some of these times will fluctuate in the second year of the program to give more time to study and research the philosophy.

The director did not find the petitioner’s response adequate and she denied the petition stating:

The petitioner submitted a training program that did not answer either question. The actual classroom time and how many hours would be spent for each subject was not given. . . . A training program **may not** be approved which (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation.

In the appeal, the petitioner states that the information provided with the petition and that given in response to the director’s request for evidence clearly provides the information which the director states is missing. The petitioner also characterizes the denial as being based solely on “request number 1 of the Request for Additional Evidence [not being] answered.” Request 1 was requesting the breakdown of the hours of classroom instruction and practical training. The petitioner continues, stating, “Should this panel [the AAO] conclude that other grounds for denial were recited in the decision, petitioner respectfully requests to be so informed in accordance with 8 C.F.R. § 103.3, and be given adequate time to respond.” The denial is not solely based on the first request for evidence, but on both requests, and the director stated that the program deals in generalities with no fixed schedule, objectives, or means of evaluation.

The proposed program’s objectives are clear, but the schedule is not fixed, nor is there any means of evaluation included in the evidence submitted. While the petitioner provided a general breakdown of the

hours devoted to each topic area of training, they are not specific, and in the second year, the petitioner states that the hours spent on each topic may change from that proposed.

The timelines need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations. There is no structure provided as to how the information is going to be taught, nor is there any detail about what actually will transpire over the designated training time.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. §. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.