



U.S. Citizenship
and Immigration
Services

D-4



FILE: WAC 03 207 52913 Office: CALIFORNIA SERVICE CENTER Date: JUL 1 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a make-up artist/stylist that seeks classification of the beneficiary as a make-up artist/stylist trainee. The director determined that the petitioner did not establish that the training is unavailable in the beneficiary's home country. In addition, the director found that the training program deals in generalities with no fixed schedule, objectives or means of evaluation and that there are no regular training facilities or personnel involved in the training. Finally, the director stated that the petitioner provided no evidence to establish that the beneficiary would not be performing productive employment beyond that which is incidental to her training.

On appeal, the petitioner submits a letter.

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 of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The AAO notes that the petitioner responded in detail to the director's Request for Evidence (RFE) on appeal. The Citizenship and Immigration Services (CIS) 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 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. Specifically, the director requested: documentary evidence, specialty and qualifications of the trainer; evidence showing why the training cannot be obtained in the beneficiary's own country; evidence showing that the beneficiary will not be placed in a position that is in the normal operation of business; evidence that the beneficiary will not engage in productive employment; evidence that the training will benefit the beneficiary in pursuing a career outside the United States; a detailed training program describing the structure and supervision to be given; and a description of the proportion of time devoted to classroom instruction, on-the-job training, and productive employment. The petitioner failed to submit the requested evidence and now submits a portion of it on appeal. However, the AAO 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 director determined that the training program deals in generalities with no fixed schedule, objectives or means of evaluation. In his request for additional evidence, the director asked the petitioner to "[d]escribe in more detail the type of training and supervision to be given and the structure of the training program." In response, the petitioner stated, "As [the beneficiary] already has training in the field of Make-up her class schedule will consist of twenty hours a week of practical experience in which she will execute beauty, and special effect make-ups for her own advanced training and portfolio and/or work in various non-paying assistant positions which will exposure [sic] her to the film and advertising industry in Hollywood." The petitioner also provided a letter from the director of the Apprentice-Mentor Association, through which the training is to be coordinated, which states, "Each apprentice/trainee's curriculum is different, as it is individualized based on the apprentice and the mentor. We have approved [the petitioner's] proposed training agenda for [the beneficiary]." These responses provide no detail whatsoever as to how the beneficiary would actually be spending her training time, nor is there any evidence of a fixed schedule or means of evaluation.

The director also found that the beneficiary would be involved in productive employment beyond that which is incidental and necessary to the training. There is no evidence that the beneficiary would be engaged in productive employment. The director's remarks on this issue are withdrawn.

The director also determined that the petitioner did not establish that the training is unavailable in the beneficiary's home country. In the petitioner's response to the director's request for evidence, she stated, "Because of the local specifics of this training this is not available to her in [her home country]." The petitioner also provided several letters from individuals in the beneficiary's field in her home country. These letters generally state that the authors are unaware of training similar to the proposed program in the beneficiary's home country. This does not constitute evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings.

Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner did not establish that this training is unavailable in the beneficiary's own country.

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 sustained that burden.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.