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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 051 54451 Office: CALIFORNIA SERVICE CENTER Date: JUN 22 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

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 dental laboratory that seeks classification of the beneficiary as a dental technician trainee. The director determined 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. In addition, the director found that the beneficiary would be employed in a primarily productive capacity, beyond that which is incidental to her training. Finally, the director stated that the beneficiary would be placed in a position that is in the normal operation of the business.

On appeal, counsel submits a brief stating that the director erred in making these determinations.

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;

(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 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 provide "in detail the type of training and supervision to be given and the structure of the training program." In response, the petitioner provided a class schedule, in six-month increments, with four topics to be covered each day.

The class schedule is listed as 8:30 a.m. to 4:30 p.m. each day, and the petitioner states in its response to the director that the training "consist [sic] of 20% of classroom lecture, 60-65% of on the job training and 15-20% of product fabrication." There is no indication in the proposed training of the amount of time that would be spent on each area of instruction, and while the schedule indicates the general percentage of time spent in classroom instruction, on-the-job training, and incidental employment, it lacks detail. The training schedule provides little detail about how the training would actually occur or what the structure of the training would be. The schedule would 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.

The director determined that there are no regular training facilities or personnel involved in the training. The petitioner provided photographs of its laboratories, but there is no indication that there is a classroom facility to be used for that portion of the training. The petitioner did not establish that it had "sufficiently trained manpower" to provide the training. While the technicians presumably have the skill to provide the training, it is not clear how they will do so, since the petitioner has a total of five employees, all of whom are involved in the ongoing production of the petitioner's product.

In addition, the director found that the beneficiary would be employed in a primarily productive capacity, beyond that which is incidental to her training. Finally, the director stated that the beneficiary would be placed in a position that is in the normal operation of the business. The beneficiary does not appear to have the skills at this time that would make her qualified for productive employment with the petitioner. The director's comments on this issue are withdrawn.

As related in the discussion above, the petitioner has failed to establish that the training program meets the terms of the regulations. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

ORDER: The appeal is dismissed. The petition is denied.