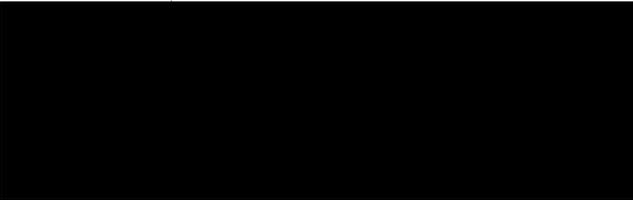




U.S. Citizenship
and Immigration
Services

D-4



FILE: LIN 01 235 56588 Office: NEBRASKA SERVICE CENTER

Date: JUN 22 2004

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

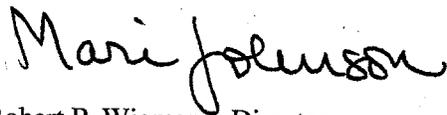
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.

to 
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The nonimmigrant visa petition was denied by the service center director and appealed to the Administrative Appeals Office (AAO). The director's decision was withdrawn and the matter was remanded to the director for a new decision. On remand, the petition was denied by the director and is again before the AAO on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an executive search firm. It seeks classification of the beneficiary as a technical recruiter trainee for two years. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a training position pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(iii).

The director initially determined that the training consisted of productive employment beyond that which is incidental to the training. In addition, the director determined that the training program could not be approved because it appeared to be designed for the ultimate staffing of domestic operations in the United States. Finally, the director found that the training would not benefit the beneficiary in pursuing a career outside the United States.

In response to the appeal, the AAO found that the petitioner had overcome all of the director's bases for denial. The AAO remanded the case to the director, however, because the reported salary for the beneficiary of \$50,000 again raised the question of whether she would be engaged in productive employment.

The petitioner was afforded an opportunity to respond to this concern, and in response to the director's December 10, 2003 request for additional information, stated that the information initially submitted had been in error. The petitioner stated that \$50,000 is the salary a full-time recruiter could be expected to earn, and submitted its own recruitment classified advertisements to establish that fact. The petitioner then stated that since the beneficiary would be working for 20 hours per week in on-the-job training, she could be expected to earn \$25,000 per year.

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.

On appeal from the first denial, the petitioner stated that the beneficiary's on-the-job training would be performing support duties for the recruiters, such as "sourcing, reference checking, salary benchmarking, web site analysis, research, and other such activities," thereby implementing her classroom training and learning the job as she progresses. If these were truly to be the beneficiary's duties, it is not clear how the petitioner can also state that she will be earning half of what a full-time commission-based recruiter would earn in a year. On appeal following the remand, the petitioner states that the \$25,000 "expected compensation . . . does not imply productive employment." He also states, "[T]he beneficiary would logically expect to earn half this amount [\$50,000] working half the hours and training the other half." In fact, if the beneficiary would be performing the support tasks the petitioner had alleged on the initial appeal, her compensation would not be an "expected" amount nor would she "logically" be expected to earn half of what a full-time recruiter earns. It appears that the beneficiary would be engaged in productive employment for 20 hours per week, rather than performing the support activities that the petitioner had cited initially.

As related in the discussion above, the petitioner has failed to establish that the beneficiary would not be engaged in productive employment, based on the compensation schedule. 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.