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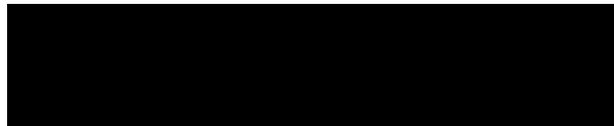


FILE: WAC 03 224 50416 Office: CALIFORNIA SERVICE CENTER Date: 5/17/2004

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:



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 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 sustained. The petition will be approved.

The petitioner is a church. It seeks classification of the beneficiary as a trainee. The director found that the training program had no fixed schedule, objectives or means of evaluation. The director also 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 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 found that the training program had no fixed schedule, objectives or means of evaluation. The petitioner filed a detailed training program when it filed the petition. The program includes a schedule with an hourly breakdown of activities, the subjects to be studied along with the booklists for each segment, samples of the lessons, and samples of the written exams. In response to the director's request for similar evidence, the petitioner referred the director to the exhibits already submitted. The director determined that the petitioner had not been responsive to his request and that it had not established that a bona fide training program existed. It appears that the director did not review or consider any of the evidence submitted to

support this element of the petition. The AAO finds that the evidence submitted does establish that the petitioner has a training program with a fixed schedule, objectives and means of evaluation as required by the regulations. The director's comments 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 response to the director's request for evidence, the petitioner submitted a letter from the assistant training administrator of the organization that would be performing the training. He stated that due to the repressive political climate in the beneficiary's home country, neither his organization nor any other could provide similar training there. He also provided two news articles regarding the organization's attempt to distribute bibles in the beneficiary's home country, which resulted in the arrest of the individuals involved. The AAO concurs with counsel and the petitioner that the proposed training is not available in the beneficiary's home country. The director's comments on this matter are also withdrawn.

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.