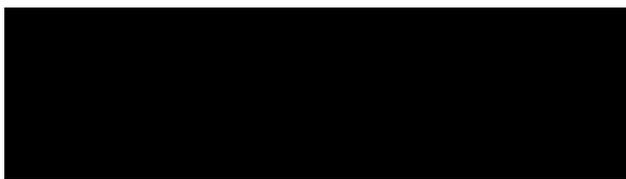


OH

U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW, Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: WAC 04 014 53289 Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Administrative data deleted to  
prevent clearly unwarranted  
disclosure of confidential information

**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 an engineering contractor that seeks classification of the beneficiary as an executive officer 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. Finally, the director stated that the petitioner provided no evidence to establish that the training would benefit the beneficiary in pursuing a career outside the United States.

On appeal, the petitioner submits a letter.

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 AAO notes that the petitioner only responded in part to the director's Request for Evidence (RFE). 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; a description of the proportion of time devoted to classroom instruction, on-the-job training, and productive employment; evidence showing the career abroad for which the training will prepare the beneficiary; and evidence showing the source of remuneration received by the trainee. The petitioner failed to submit the requested evidence.

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:

[The beneficiary] is to be trained for the following categories:

- a. System Integration and Control Management.
- b. Installation of water and sewer pumping system.
- c. Construction of Post Tension Concrete Slabs.
- d. Installation of Steel framing.

[The beneficiary] shall spend 20% on Class training, 65% on visual site training and 15% Hands On Training. [sic]

This response provides no detail as to how the beneficiary would actually be spending his training time, nor is there any evidence of a fixed schedule or means of evaluation. The petitioner was requested to provide a fixed training schedule with significant detail as to each element of the training, and it did not do so.

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, it stated, "Since [the beneficiary] is going to represent our organization in the UK, it is our requirement that he need [sic] to be trained and educated with our procedures under the direct supervision of our management." This statement does not constitute evidence that the training is unavailable in the beneficiary's own country.

Finally, the director found that the petitioner had not established that the training would benefit the beneficiary in pursuing a career outside the United States. The petitioner stated that its intent was to "operate a similar company in the UK which is a Joint Venture [sic] with [the petitioner]." The petitioner provided no documentary evidence to establish that it was creating a presence in the UK where the beneficiary would be employed, and therefore did not meet its burden of proof as related to this element of the adjudication.

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.