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FILE: EAC 05 198 52879 Office: VERMONT SERVICE CENTER

Date: DEC 28 2005

IN RE: Petitioner:  
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:



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 Michael T. Kelly*  
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 dismissed. The petition will be denied.

The petitioner is a wholesaler and manufacturer of accessories and novelties that seeks to employ the beneficiary as an administrative assistant (accounting and finance) trainee. The director determined that the petitioner did not establish that the training program had a fixed schedule, objectives or means of evaluation. The director found that the beneficiary would be engaged in productive employment beyond that which is incidental and necessary to the training. The director stated that the petitioner did not establish that the training would prepare the beneficiary for a career abroad.

On appeal, counsel submits a brief and supporting documentation.

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; (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.

On appeal, counsel states that the structure of the classroom element of the training is not determined until several weeks before the training begins. Counsel asserts that the petitioner explained in its reply to the director's request for evidence that the training time is variable, depending on how quickly an individual learns, but that it is normally completed in a few months. The proposed training is for two years, in order to provide the petitioner with flexibility. Counsel states that the training is company-specific, which is why the

training must take place at its headquarters in New York, but that the director was mistaken in his statement that the petitioner is not currently operating in the beneficiary's home country. Counsel asserts that the beneficiary will not be involved in any productive employment.

The director found that the petitioner did not establish that the training program had a fixed schedule, objectives or means of evaluation. The AAO concurs. The petitioner presented a training schedule that covered a two-year period, as was requested on the Form I-129. In response to the director's request for evidence, however, the petitioner stated, "The time required for training is variable but it is normally completed in a few months. Your instructions say that up to two years is available so we asked for the two years in order to leave our options open." Given this statement, the petitioner has not established that the training program deals with a fixed schedule. The training, apparently, can occur over a period of several months to two years. On appeal, counsel repeats the petitioner's statement, but provides no explanation or understanding of how the proposed training meets the terms of 8 C.F.R. § 214.2(h)(7)(iii)(A), which prohibits approval of a training program that has no fixed schedule or means of evaluation. In addition, the schedule provided lists different departments in which the beneficiary would be training and the time attached to each (ranging from one week to 52 weeks each), along with a list of offices or topics to be covered in each phase. None of the topics in the training include any additional information regarding the length of time to be spent in each area or what the beneficiary would actually be doing for each segment of training. It does not provide any specifics to establish that the program does not deal in generalities, with no fixed schedule, objectives or means of evaluation.

The director found that the beneficiary would be engaged in productive employment beyond that which is incidental and necessary to the training. It appears that the training is comprised of two weeks of formal classroom instruction, and approximately two years of rotational on-the-job training. The beneficiary will receive \$525.00 per week, for an annual salary of \$27,000. This amount is not insignificant, and could in some cases indicate that a beneficiary would be engaged in productive employment. In this case, since it is unclear what activities would occur during the training, the petitioner has not established that the beneficiary would not be engaged in productive employment.

The director stated that the petitioner did not establish that the training would prepare the beneficiary for a career abroad. The AAO disagrees. The petitioner established that it is a multi-national company, with operations in the beneficiary's home country, and provided a letter from its manager in that country recommending the beneficiary for the training program. The director's remarks on this issue are 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 not sustained that burden.

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