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**U.S. Citizenship
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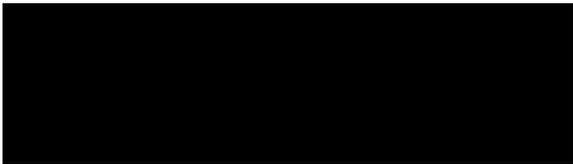


FILE: WAC 04 122 50445 Office: CALIFORNIA SERVICE CENTER Date: MAR 02 2005

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 window manufacturer that seeks to extend employment of the beneficiary as a factory supervisor/assistant manager trainee. The director determined that the beneficiary already possesses substantial training and expertise in the proposed field of training.

On appeal, counsel submits a brief.

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;
- (5) Describes the career abroad for which the training will prepare the alien;

- (6) 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
- (7) 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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (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 beneficiary already possesses substantial training and expertise in the proposed field of training. On appeal, counsel reiterates his arguments submitted in response to the director's request for evidence. He states that the petitioner has established that the training is not available in the beneficiary's home country and that the training will benefit the beneficiary in preparing for a career abroad. Counsel further asserts that the beneficiary would not be engaged in productive employment. None of these issues were raised by the director in his decision, and it is not clear why counsel raises them on appeal. Counsel then cursorily addresses the issue of the beneficiary's expertise by stating that the beneficiary "has obtained

some basic experience in manufacturing and sales through the part of the training he already fulfilled, but he still has many units to take in order to fully complete training program offered by [the petitioner].”

The beneficiary has spent nine months in H-3 status training with the petitioner. The petitioner provides no information anywhere in the record as to how the proposed training differs from that the beneficiary has already received. The director requested that the petitioner provide additional evidence, stating, “The record indicates that the beneficiary already possesses substantial training and expertise in the proposed field of training. Explain and provide evidence to show how the proposed training differs from the expertise that the beneficiary already possesses.” In response counsel stated:

[The beneficiary] has an Associate degree in the electrical field but has absolutely or [sic] expertise in the window industry or even business generally. This training program at [the petitioner] involves a complete indoctrination into all the key elements of this business, a business with which [the beneficiary] was previously unfamiliar Moreover, it is clear that [the beneficiary] does not have prior training or experience in the Manufacturing and Sales of vinyl windows.

Since the beneficiary has already received nine months of training from the petitioner, it is not clear how the beneficiary could have no prior training or experience in the field, as counsel stated. The petitioner did not address the issue of the beneficiary’s prior training in either its response to the director’s request for evidence, or on appeal. As a result, the petitioner has not established that the beneficiary does not possess prior training or expertise in the field.

Beyond the decision of the director, even if the petitioner had established that the beneficiary did not already possess substantial training and expertise in the field of the proposed training, the petition could not have been approved. The beneficiary has spent nine months in H-3 status training with the petitioner. The proposed training program is scheduled to last 85 weeks, or approximately 20 months. The regulation at 8 C.F.R. § 214.2(h)(9)(iii)(C)(I) states, in pertinent part: “An approved petition for an alien trainee . . . shall be valid for a period of up to two years.” 8 C.F.R. § 214.2(h)(15)(ii)(D) provides that “[a]n extension of stay may be authorized for the length of the training program for a total period of stay as an H-3 trainee not to exceed two years.” The petitioner’s training program is for 20 months, in addition to the nine months the beneficiary has already spent in H-3 status. The beneficiary would not be able to complete the proposed training in the time frame allowed by the regulations. For this additional reason, the petition may not be approved.

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.