

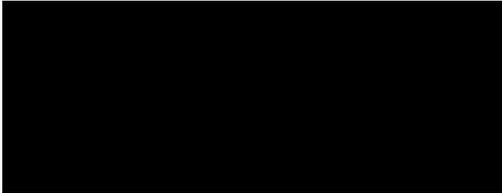
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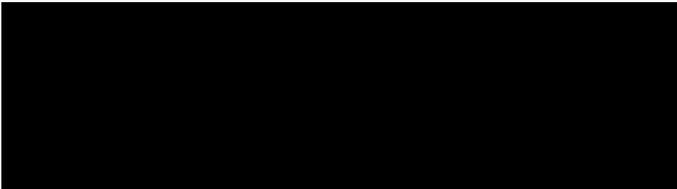
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FILE: EAC 02 226 52750 Office: VERMONT SERVICE CENTER Date: **MAR 10 2005**

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.

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 law firm that seeks to employ the beneficiary as a law clerk trainee. The director determined that the training involves productive employment beyond that which is incidental to the training and that no actual training program exists.

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 would be engaged in productive employment and that no actual training program exists. On appeal, counsel asserts that the State of Vermont allows for studying law, and taking the bar exam, through a study program and/or internship with private attorneys. The Vermont Supreme Court supervises the program. Counsel asserts that the director never requested additional evidence regarding the validity of the program in her multiple requests for evidence. Finally, counsel states that productive employment is incidental to the training.

Contrary to counsel's assertion, in the director's third request for evidence, issued November 4, 2003, the director requested "additional evidence to establish that you have an actual well-structured training program. . . . Submit additional evidence to explain how much time will be spent in classroom instruction and how much will be spent in on-the-job training." The petitioner provided much of the same information that had been submitted with the petition, and found to be inadequate. Included in the response was: a copy of the law office study six month report form for the State of Vermont; the certificate of a judge or attorney to be submitted at the start of law office study; the certificate to be submitted at the termination of study; the state regulations allowing for law office study; and the applicant's notice of commencement of law office study. While this information establishes that this type of training is allowed in Vermont, and is adequate preparation for the bar exam in that state, it does not meet the terms of the regulations, which require that each petition "include a statement which describes the type of training and supervision to be given, and *the structure of the training program.*" [Emphasis added]. The regulations do not allow a training program that "deals in generalities with no fixed schedule, objectives, or means of evaluation."

The director denied the petition stating, "It does not appear that an actual training programs exists." While she could have been more detailed in stating her reasons for coming to this conclusion, it is clear that the proposed training does not meet the terms of the regulations. The AAO is not denying that the State of Vermont has some sort of structure for training to be a lawyer outside of attending law school, but the AAO concurs with the director that the training program, as explained in the petition and supporting evidence, does not meet the terms of the regulations.

Regarding the director's statement that the beneficiary would be engaged in productive employment, it is not possible to make that determination from the evidence in the record. Since there is little detail about what the trainee would actually be doing, it is difficult to determine whether the work would include productive employment beyond that which is incidental to the employment.

The director also determined that the petitioner is out of status and cannot change her status. Counsel states that CIS never notified him or the beneficiary regarding the request to extend her previous status. The AAO will not adjudicate this issue, however, as it does not have the authority to review an application for a change of status that has been filed on an I-129 petition. See 8 C.F.R. § 248.3(g).

Beyond the decision of the director, even if the training program had been determined to be sufficiently detailed, it could not have been approved. The regulation at 8 C.F.R. § 214.2(h)(9)(iii)(C)(1) 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 four years, and 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.

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