

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D4

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAR 15 2005

IN RE: Petitioner: [REDACTED]
Beneficiaries: [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

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 auto detailing company that seeks to employ the beneficiaries as auto detailer trainees. The director found that the petitioner had not established that the beneficiaries would not be placed in a position in the normal operation of business and that they would be engaged in productive employment. The director also found that the beneficiaries possess substantial training and expertise in the proposed field of training and that the training is available in the beneficiaries' home country. The director stated that the petitioner did not establish how the training would benefit the beneficiaries in pursuing a career outside the United States.

On appeal, the petitioner submits a brief stating that the director erred in his decision and that the beneficiaries will not be working in the normal operation of business. The petitioner also stated that the beneficiaries will not be engaged in productive employment and that they do not possess prior training in the proposed field of training. Finally, the petitioner states that the training will prepare the beneficiaries for a career in their home country.

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 beneficiaries would be engaged in productive employment for the majority of their workweeks. The training program is structured so that the beneficiaries would shadow the petitioner's employees to observe their work. The petitioner states that the beneficiaries would never be in a position to detail a car on their own. The director did not specifically state the basis for his determination that the beneficiaries would be engaged in productive employment, beyond referencing that the training program is structured to include the shadowing of employees, and informal classes taught by the petitioner's owner. In reviewing the elements of the training, however, it appears unlikely that the beneficiaries would be engaged in productive employment during the course of their training. It is determined that this basis for the director's decision to deny the petitioner cannot be substantiated.

The director also found that the beneficiaries would be working in the normal operations of the petitioner's business. Again, it is not clear how the director came to this determination. There is nothing in the record that indicates that the beneficiaries would be working in the normal operations of the business, beyond working on some vehicles alongside the petitioner's owner.

The director stated that the beneficiaries possess substantial training and expertise in the proposed field of training because they own an automotive repair business in their home country. They both have significant training in the repair of the mechanics of cars. One of the beneficiaries has training and previous employment in auto body repair. This beneficiary worked for a business whose work includes "repair renovation, overhauling, denting, painting, [e]lectrical and upholstery work," many of the same type of repairs done during the detailing process. This experience indicates that the beneficiary possesses substantial expertise in the proposed field of training.

The director determined that the proposed training is available in the beneficiaries' own country. Based on the training that one of the beneficiaries received and his subsequent employment, the AAO agrees with the director that the petitioner did not establish that the training is not available in the beneficiaries' own country, as required by the 8 C.F.R. § 214.2(h)(7)(ii)(A)(i).

Finally, the director found that it was unclear how the training would benefit the beneficiaries in pursuing a career outside the United States since they already have viable careers in auto repair. It is not relevant that the beneficiaries already have careers; the purpose of this part of the regulation is to ascertain that the training would be beneficial to establishing or enhancing a beneficiary's career. In this instance, the beneficiaries own and operate an auto repair shop. The training is in automotive detailing, a service which could be provided to the beneficiaries' existing customers or used to gain new customers.

Beyond the decision of the director, the training schedule as currently presented appears to deal in generalities, and has no means of evaluation. The training program should be significantly more detailed as to the amount of time to be spent on each area of training, as well as how the trainees would be evaluated. 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.