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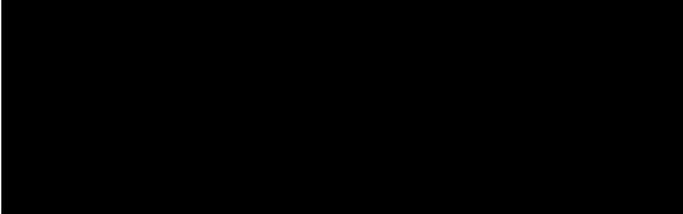


FILE: SRC 04 134 50921 Office: TEXAS SERVICE CENTER Date: **MAY 23 2005**

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:



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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a thoroughbred horse farm that seeks to employ the beneficiaries as trainees. The director determined that the petitioner did not establish that the training was unavailable in the beneficiaries' home country. On appeal, counsel submits a brief and supporting documentation.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (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.

The director found that the petitioner did not establish that the training was unavailable in the beneficiaries' home country.

In response to the director's request for evidence, counsel submitted a letter from a veterinarian in the beneficiaries' home country, which stated that most European veterinary schools offer a level of training which fail to meet the minimum requirements of a 1978 directive attempting to improve the level of training in Europe. He also stated, "Most veterinary training in Europe is designed for the care of companion animals, such as dogs, cats, birds, etc., with relatively few veterinarians specializing in the care of horses." The author

of the letter states that his practice includes a significant equine component. The proposed training, while clearly not primarily related to veterinary practice, or intended to train the beneficiaries to become veterinarians, does include a variety of veterinary techniques related to the care of horses. The petitioner has overcome the grounds of the director's denial, and the director's comments on the issue are withdrawn.

The petition may not be approved at this time, however. The director did not address the issues of whether the training program deals in generalities with no fixed schedule or is on behalf of beneficiaries who already possess substantial training and expertise in the proposed field of training. In addition, there are inconsistencies in the record that must be resolved.

The petitioner submitted a general training schedule, but it did not provide enough detail to meet the terms of the regulations. The training program is broken into seven-week to 16-week blocks of time, with only a brief statement of the activities that would be included during these periods. Each segment includes two hours of classroom instruction per day. However, the AAO notes that in the letter of support, the petitioner stated that the "training program has two major components: 1) classroom study; and 2) field operations and administrative training. Component 1 will entail enrollment in the selected courses at the University of Kentucky, in addition to on-going classroom instruction by our training supervisors." In response to the director's request for evidence, the petitioner stated that the petitioner's training instructors would provide the classroom instruction, with no reference to university courses. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, coursework at a college or university would not be allowed under the proposed H-3 visa classification. Given this discrepancy, the petitioner did not establish the nature of the classroom component of the training program. The petitioner needs to provide a training program with significantly more detail in order to meet the terms of the regulations.

In addition, the director did not address the issue of whether the beneficiaries already possess substantial training in the field. The beneficiaries appear to have worked for and/or trained with the petitioner for 12 months in J-1 status, and while the petitioner stated in its letter of support the general duties of the beneficiaries during this period, the petitioner must address in more detail the difference between the J-1 activities and the proposed training.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the beneficiaries have significant training and expertise in the area of proposed training, and whether the training program deals in generalities with no fixed schedule, as well as any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's December 14, 2004 decision is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.