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FILE: WAC 05 139 51456 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 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 company that provides wireless systems for film and video that seeks to employ the beneficiary as a trainee. The director determined that the beneficiary would be engaged in productive employment and that the petitioner did not establish the structure of the training program.

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;
- (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 on-the-job training is the only option available for the beneficiary to receive training, since the proffered position did not previously exist. Counsel also states that there is significant academic training, evidenced by the manuals describing how to operate the remote control filming systems. Counsel asserts that since this is the first time the petitioner has offered the proposed training, "there is no concrete training manual or guidelines which can be demonstrated or submitted as evidence since they do not exist."

The director determined that the beneficiary would be engaged in productive employment. The director stated that the training would be primarily on-the-job training, with the beneficiary earning \$2,500 per month for the first six months, and then he would be eligible to receive additional pay on a per job basis like the petitioner's other employees. This additional remuneration would be \$500.00 per shoot day and \$400.00 for travel and pre-production days. The director noted that the petitioner stated that once the beneficiary had completed the first half of the training, the beneficiary would increase the petitioner's "pool of trained personnel thus allowing numerous jobs to take place simultaneously, increasing the company's revenue stream tremendously." The AAO notes that the petitioner's organizational chart reflects that the beneficiary's base salary would only be slightly less than the petitioner's engineer and technician, indicating that the beneficiary would likely be engaged in productive employment.

The director also found that there is no evidence that the training program deals with a fixed schedule, objectives, or means of evaluation. The schedule provided with the petition is very general, broken into six general topic areas. The AAO notes that the Form I-129 indicates that the petitioner requested a visa for a two-year period. The petitioner's March 23, 2005 letter of support states that the training would take place over three three-month periods. The training schedule submitted along with this letter states that "completion of this training program takes about 8 months." The training schedule submitted in response to the director's request for evidence states that "completion of this training program takes about 2 months." The petitioner does not provide any consistent timeframe for the proposed training. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, none of the topics in the training schedule includes any additional information beyond a title. For instance, the topics for segment 6 (payload systems operation, set-up, troubleshooting) are described as: installing different types of payloads; weight and balance; film payload—24 vdc operation; video payload; surveillance payload; microwave downlink; antennae and frequencies; and range check for video and remote control. The description of segment 6 gives no information regarding what the beneficiary would actually be doing for this segment or how he would be training. The AAO finds that the proposed training provides no specifics to establish that the program does not deal in generalities, nor does the schedule provide any information regarding a means of evaluation.

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.