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FILE: EAC 05 237 51539 Office: VERMONT SERVICE CENTER Date: APR 10 2006

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

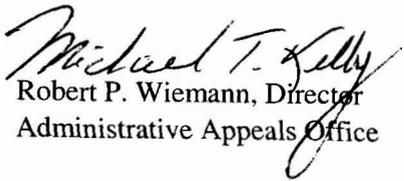
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.

for 
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 human services organization that provides residential services for adults with mental retardation and mental health illness. It seeks to employ the beneficiaries as community support specialists. The director determined that the beneficiaries would be performing duties in the normal operation of the petitioner's business and in which citizens and resident workers are regularly employed. The director found that the petitioner did not establish that the training would prepare the beneficiaries for a career abroad. The director also found that the petitioner did not establish that the training was unavailable in the beneficiaries' home country. The director stated that the beneficiary would be engaged in productive employment beyond that which is incidental and necessary to the training.

On appeal, the petitioner submits a statement.

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.

The director found that the beneficiaries would be performing duties in the normal operation of the petitioner's business and in which citizens and resident workers are regularly employed. In its addendum to the Form I-129, the petitioner stated, "In addition to helping to alleviate some of the problems of having

vacant positions within our organization,” the petitioner was committed to training people from Russia in working with people with mental retardation and mental illness. The petitioner further stated, “By training individuals and having them help to fill open hours, we create a more stable environment for the people living in our homes.” The petitioner also stated, “Another consideration from the agency’s standpoint is that if the on-the-job training hours are filled with overtime by existing employees the overtime cost could exceed the cost of the training program.” The director raised these issues in her decision, but the petitioner did not address them on appeal. The director also found that the beneficiaries would be engaged in productive employment, since they would be spending 75 percent to 87.5 percent of their time in hands-on training. While the director did not address the remuneration the beneficiaries would receive, the AAO notes that each would be paid \$19,500 annually. These elements taken collectively indicate that the training program would result in productive employment, beyond that which is incidental to the training. The petitioner’s statement regarding the training program as a method to fill vacant positions and avoid overtime for its regular staff makes it clear that there is both productive employment and that the beneficiaries will be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

The director found that the petitioner did not establish that the training would prepare the beneficiaries for a career abroad. The AAO does not concur. The training that the beneficiaries would receive would clearly prepare them to work in the same field upon their return to their home country. The director also found that the petitioner did not establish that the training was unavailable in the beneficiaries’ home country. Again, the AAO does not concur. The director stated that the letter provided from the Director of the Social Rehabilitation Centre in the beneficiaries’ home country only stated that programs were inaccessible and isolated, but not non-existent. The director misinterpreted the statements, which were referring to community-based service programs throughout Russia. The letter clearly stated that the proposed training is unavailable in Russia.

Beyond the decision of the director, the AAO finds that the training program deals in generalities, with no specific schedule, objectives, or means of evaluation. While the petitioner provided a “Weekly Training Plan” that included numerous topic areas, there is no information regarding what the beneficiaries would actually be doing for these periods or how they would be training. The plan does not provide any specifics to establish that the program does not deal in generalities, which is prohibited by the regulations. While the objectives of the proposed training are clear, the schedule lacks specificity, and the training program has no clear means of evaluation that is related to the training. In addition, in its response to the director’s request for evidence, the petitioner stated that although it was requesting a visa covering a period of two years, the training program is actually designed for a 12-18 month period, and that the beneficiaries would receive additional supervisory training if they complete the proposed training prior to the two-year period. Again, this indicates that the training program has no specific schedule.

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.