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DU

FILE: EAC 05 241 51844 Office: VERMONT SERVICE CENTER Date: **APR 14 2006**

IN RE: Petitioner: [Redacted]  
Beneficiary: [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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 religious non-profit organization that seeks to employ the beneficiary as an administrator trainee. The director determined that the training deals in generalities with no fixed schedule, objectives or means of evaluation. The director found that the training is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The director also found that the petitioner did not establish that the training was unavailable in the beneficiary's home country. The director stated that the beneficiary would be engaged in productive employment.

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 training program deals in generalities with no fixed schedules, objectives, or means of evaluation. In her request for evidence, the director requested that the petitioner, "Submit additional evidence to establish that you have an actual, well-structured training program. You must submit a complete outline of the proposed training program." In response, the petitioner stated, "The training we wish to provide

will be of an apprenticeship nature rather than formal schooling.” The petitioner then stated that the areas of training would include: “Administrative: bookkeeping, purchasing, orders[;] Developing of materials—desktop publishing—learning the software programs that we use[;] Printing, binding and presentation of materials[;] Telephone protocol[;] Grading of tests—record keeping[;] Distribution procedures[.]” The petitioner further stated, “The training will be done through actual work in the office. She [the beneficiary] will be taking [sic] time to learn from each of our workers, the office manager, the Bible School administrator, the print operations manager and those who work on developing of materials.” On appeal, the petitioner states that the beneficiary will participate in 15 hours of classroom instruction each week, including attending [REDACTED]. She will also spend 15 hours per week in on-the-job training, and 10 hours of work-study each week. There is no clear schedule of how the beneficiary will spend her training time, nor is there any indication of a means of evaluation. The AAO concurs with the director that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation.

**The director stated that the beneficiary would be engaged in productive employment.** The petitioner did not complete the Part 5, Number 6 of the Form I-129, which requested information regarding wages per week or per year. The petitioner stated in Part 5, Number 7 that “other compensation” included “room & board—expenses.” On appeal, the petitioner states that the beneficiary would be engaged in “work study” for ten hours per week, but does not define what that includes. The petitioner has not established that the beneficiary would not be engaged in productive employment beyond that which is incidental and necessary to the training.

The director found that the training is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The director stated that the beneficiary has been working for the petitioner in her own country, and, therefore, she already possesses substantial training and expertise in the proposed field of training. The director also found that the petitioner did not establish that the training was unavailable in the beneficiary’s home country. The AAO disagrees and withdraws this portion of the director’s decision. While it is not clear from the record what the beneficiary’s duties are in her home country, the petitioner indicated that there are portions of the training that will train the beneficiary about aspects of the petitioner’s ministry that are only performed at its headquarters. The petitioner has established that its organization’s headquarters office has a need to train its overseas workers at its central facility.

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.