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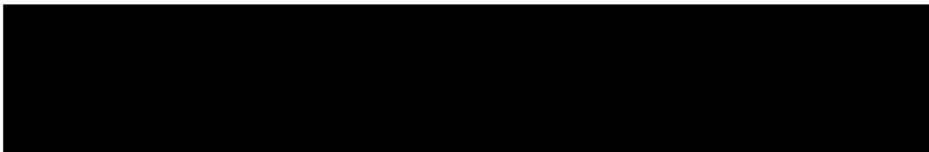
FILE: WAC 06 035 54021 Office: CALIFORNIA SERVICE CENTER Date: **JUL 14 2006**

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.

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 recording studio that seeks to employ the beneficiary as an audio engineer. The director determined that the petitioner did not establish that the training was not available in the beneficiary's own country. The director also found that the training was on behalf of a beneficiary who already possessed substantial training and expertise in the proposed field of training. Finally, the director stated that the training is designed to extend the total allowable period of practical training previously authorized to a nonimmigrant student. On appeal, counsel submits a statement.

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 beneficiary's home country. In response to the director's request for evidence, the petitioner provided copies of publications to establish that training was unavailable in the beneficiary's home country. The petitioner also submitted a letter from the beneficiary's previous employer, a recording studio in her home country, addressing the issue. The publications all appear to be in magazines from the beneficiary's home country advertising college and training programs in the United States. The advertisements do not establish that the programs are unavailable in the beneficiary's home country, only that there is a market for individuals to receive training overseas. The letter from the beneficiary's previous employer states, "I also realize that our

company or any other recording studio in Thailand for that matter, can not provide the experience she will gain working with the world famous producers and engineers like the people making the top 100 billboard charts in America.” While this letter indicates that the beneficiary may gain valuable experience based on the skills of the petitioner’s employees, it does not address the actual training available in Thailand. In addition, the author of the letter provides no documentation to substantiate his opinion. On appeal, counsel states that the petitioner “did produce ample evidence to show that the proposed training is unavailable in alien’s own country,” but does not address the matter further. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not established that the proposed training is unavailable in the beneficiary’s home country.

The director also found that the training was on behalf of a beneficiary who already possessed substantial training and expertise in the proposed field of training. The petitioner earned an associate’s degree in recording arts in the United States. In addition, she has been employed by the petitioner in the capacity of “runner and 2nd engineer,” according to the petitioner’s February 9, 2006 employment verification letter. On appeal, counsel states, “Please note that training given by petitioner to the beneficiary during the OPT period was substantially different from the proposed training under H3. In a separate brief Petitioner will produce more evidence regarding that.” Counsel submits a brief letter from the petitioner stating that the beneficiary had been on its staff for over a year and addressed her duties as a runner. The letter does not, however, address the duties of a 2nd engineer, or address the petitioner’s previous statement in the February 9 letter that the skills that the beneficiary was learning in that role “can be transferred to any position in the music industry.” In his request for evidence, the director asked the petitioner to “[e]xplain and provide evidence to show how the proposed training differs from the expertise that the beneficiary already possesses.” The petitioner provided the evidence consisting of the beneficiary’s transcript and letters of employment verification, but did not address the issue of how the proposed training differs from the experience and education the beneficiary already possesses. The petitioner did not establish that the proposed training is not on behalf of a beneficiary who already possesses substantial training and expertise.

The director stated that the training was designed to extend the total allowable period of practical training previously authorized to a nonimmigrant student. On appeal, the petitioner states that the duties performed by the beneficiary during her period of optional practical training did not require any audio technical skills, although the petitioner requires individuals to perform these duties prior to gaining actual experience as a sound engineer or producer. The petitioner now wishes to train the beneficiary for an additional 20 months. The AAO agrees that the petitioner wishes through further training to extend the allowable period of practical training in violation of the regulations.

Beyond the decision of the director, the AAO notes that the proposed training deals in generalities with no fixed schedule. In Part 5 of the Form I-129, the petitioner stated that the dates of intended employment are from 11/1/05 to 7/1/07, a period of 20 months. In its letter of support, the petitioner stated, “The length of the training scheme is difficult to assess with precision. We anticipate 18-24 months.” The document entitled “Structure of the Training Program,” indicated that each trainee will receive 20 weeks of formal classroom instruction, and then will rotate through various assignments lasting “for approximately 18 months,” which

would cover a total training period of about 23 months. The record does not establish that the proposed training has a fixed schedule, or that it would be completed in the timeframe requested on the Form I-129.

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.