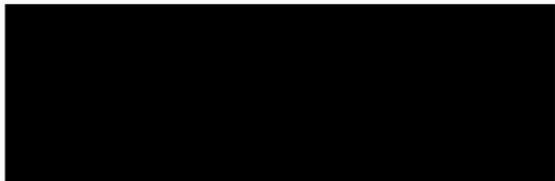


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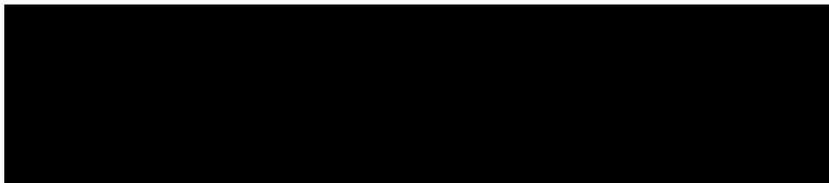
FILE: SRC 05 227 50388 Office: TEXAS SERVICE CENTER Date: **MAY 08 2006**

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 blue ink, 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 restaurant that seeks to employ the beneficiary as a restaurant management trainee. The director determined that the training deals in generalities with no fixed schedule, objectives or means of evaluation. The director also found that the petitioner did not establish that the training was unavailable in the beneficiary's home country.

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.

The director found that the training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program submitted with the initial petition breaks the training into four six-month periods, listing the topics to be covered in each segment. None of the topics in the training include any additional information regarding the length of time to be spent on each topic within the phases or what the beneficiary would actually be doing for each segment of training. It does not provide any specifics to establish the means of evaluation or that the program does not deal in generalities.

There is no information regarding what the beneficiary would actually be doing for these periods or how he would be training. For instance, during "Assignment I," the duration is listed as "approximately six months," with only 56 hours clearly accounted for. In "Assignment II," the duration is again listed as approximately six months, with 120 hours of classroom instruction and no other indication of how the training time would be spent. 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.

The director also found that the petitioner did not establish that the training was unavailable in the beneficiary's home country. On appeal, counsel submits a letter from a restaurant owner in the petitioner's home country, which states that the training program is not available in any restaurant that he owns. He also states that there is no similar program in the city. He does not, however, refer to any evidence or detail how he came to the conclusion that no training was available in the city. In addition, he does not state that there is no training available anywhere in the country. There is no information in the proposed training schedule to indicate that the program provides any level of training beyond that which could be acquired in any fine dining restaurant. The petitioner has not established that the proposed training is unavailable in the beneficiary's home country.

Beyond the decision of the director, the petitioner has not established that the training will prepare the beneficiary for a career abroad. The petitioner repeatedly referenced its plans to place the beneficiary in charge of one of its restaurants abroad. There is no evidence in the record, however, to establish that the petitioner actually owns any restaurants in the beneficiary's home country. 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)). For this additional reason, the petition cannot be approved.

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.