

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D4

FILE: SRC 06 071 51870 Office: TEXAS SERVICE CENTER Date: **MAY 09 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:

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 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 law office, tax preparation and bookkeeping organization that seeks to employ the beneficiaries as production trainees. The director determined that the petitioner does not have adequate facilities or personnel to provide the training. The director stated that the training would be on behalf of beneficiaries who already possess substantial training and expertise in the proposed field of training. The director also found that the petitioner did not establish that the training will benefit the beneficiaries in pursuing a career outside the United States.

On appeal, the petitioner 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, the petitioner states that the director misinterpreted some of the evidence to mean that the proposed training would be offered at a site other than the petitioner's offices. The petitioner also states that the beneficiaries have no experience in preparing United States tax documents, so despite their education in fields such as accounting and economics, they do not possess any training or knowledge in the field of the

proposed training. The petitioner states that the beneficiaries have been hired to work for one of its affiliates in Mexico after the training is complete.

The director found that the petitioner did not establish that it has adequate facilities and personnel to provide the proposed training. The petitioner states that the director misinterpreted the evidence in coming to this conclusion. The director stated that the petitioner's response to the director's request for evidence included documentation stating that the beneficiaries will work and train at a Catholic church. On appeal, the petitioner states that the beneficiaries would only be training at the church for three days, and that it was not part of the official training schedule. The petitioner also states that the training will occur at its 2000 square foot office space. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director stated that the training would be on behalf of beneficiaries who already possess substantial training and expertise in the proposed field of training. Four of the beneficiaries are from Viet Nam; one has a degree in economics, and another has a degree in law. The third beneficiary has a two-year degree in accounting, and the fourth beneficiary is a "computer specialist." The other beneficiary is from Mexico, has a degree in accounting and was previously trained and employed by the petitioner. Although the beneficiaries all have significant education and training, it is not clear that the beneficiaries from Viet Nam possess any training or expertise in the preparation of American tax documents. The beneficiary from Mexico, however, appears to have already been in training and employed by the petitioner. The director's remarks regarding the four Vietnamese beneficiaries are withdrawn, but the remarks remain valid for the beneficiary from Mexico.

The director also found that the petitioner did not establish that the training will benefit the beneficiaries in pursuing a career outside the United States. The petitioner states that the beneficiaries will be working for its affiliate in Mexico. There is no evidence in the record, however, regarding an employment contract between the petitioner or its affiliate and the beneficiaries. On appeal, the petitioner provides copies of two e-mails; one is in Spanish and does not include a translation. Therefore, it has no probative value. The second e-mail states that there is interest from some individuals regarding the petitioner's services in Mexico. In response to the director's request for evidence, the petitioner stated that the American Chamber of Commerce in Mexico had requested that the petitioner provide tax preparation services in Mexico. Again, there is no evidence in the record to support this statement. 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)). In addition, the AAO notes that in its December 15, 2005 letter of support, the petitioner stated:

[T]he principal purpose of the training program . . . is to give our employees . . . first-hand knowledge of United States tax preparation and bookkeeping, which will give them a solid credential for admittance to any graduate accounting program. Acceptance in an [sic] graduate program in the United States would be difficult for many of the trainees without a period of training in a business organization such as is provided by [the petitioner].

This statement indicates that the purpose of the training program is not to prepare the beneficiaries for employment outside the United States, but is instead to prepare them to attend graduate school in the United States. The petitioner has not established that the proposed training would benefit the beneficiaries in pursuing a career outside the United States.

Beyond the decision of the director, the AAO notes that the training program does not have a fixed schedule, objectives and means of evaluation. In its letter of support, the petitioner states that the training program includes four months of formal instructional exercises and that “[d]uring the second aspect of the training program, trainees are placed, for specified periods of time, with o-going [sic] project teams to allow for ‘on-the-scene’ observation and question periods.” In the training program description submitted with the petition, the petitioner states that the beneficiaries “will receive two weeks of formal classroom instruction.” The petitioner further states that the “trainees will be assigned to a volunteer site to prepare tax, for that they will receive their normal paycheck as established in their individual employment contracts. They will be paid per diem for the 4-month period while in the United States.” In response to the director’s request for evidence, the petitioner provided a more detailed description of the training program, broken down into months. It is not clear how the beneficiaries would actually be trained, as there is conflicting evidence in the record. As previously noted, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*.

The AAO finds that the petitioner did not establish that the proposed training is unavailable in the beneficiaries' home country. At least one of the beneficiaries received training from the petitioner in his home country. In its letter of support, the petitioner stated that it had previously employed one of the beneficiaries in Mexico, and that he had “been taught by the President on several different occasions to prepare individual United States Tax, since he was administered [sic] the training in Mexico for the past several years.” For these additional reasons, the petition may not 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.