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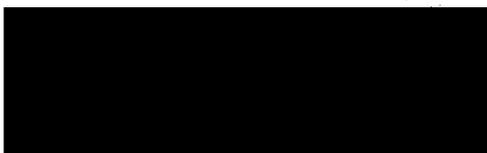
FILE: WAC 07 142 52559 Office: CALIFORNIA SERVICE CENTER Date: DEC 26 2007

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 black 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 sustained. The petition will be approved.

The petitioner is a dental laboratory with 116 employees and gross annual income of \$11 million that seeks to employ the beneficiary as a trainee in an advanced cosmetic dental implant training program for a period of twenty-four months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that the petitioner had failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; and (2) that the petitioner had failed to establish that the proposed training program is not designed to extend the beneficiary's total allowable period of practical training.

On appeal, counsel contends that the director erred in denying the petition.

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, the following:

- (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.

In his April 9, 2007 letter of support, counsel stated the following:

The course is designed to teach advanced skills in the rapidly expanding field of dental implantology to dental technicians with a basic working understanding of and experience in dental technology. . . .

* * *

The [petitioner's] Advanced Cosmetic Dental Implant Training Program is designed to provide enrollees with training and advanced instruction in the fabrication of dental prostheses and implants manufactured using gold-titanium-palladium casting techniques. The program is designed to provide in-depth instruction in the necessary techniques, technical skills[,] and knowledge required for fabrication of highest quality dental implants and dental prostheses . . . Students will be introduced to the latest U.S. technology and processes that are employed in the industry for the production of dental prostheses manufactured from by [sic] means of sophisticated gold-titanium-palladium hybrid casting procedures as well as techniques specifically designed for other state-of-the art composite materials.

The director found that the beneficiary already possesses substantial training and expertise in the proposed field of training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

In her July 13, 2007 denial, the director noted that the beneficiary graduated from a two-year dental technician program in Japan in 2005, worked as a dental technician in Japan for four months, and participated in an eighteen-month J-1 exchange training program in dental laboratory technology. The director stated that the petitioner had failed to "prove the lack of his education and experience."

In his September 8, 2007 appellate brief, counsel states, in pertinent part, the following:

Petitioner does not dispute that the beneficiary has training as a dental technician; such training [is] a prerequisite to enrollment in the course.

* * *

The Decision does not address the evidence submitted by the petitioner to demonstrate that the beneficiary, although possessing training in the general field of dental technology, **has received NO training**, whatsoever, in the special field of dental implants. . . .

The cases cited in the decision, while supporting the general proposition that a program may not be approved where the beneficiary already possesses substantial training and expertise in the proposed field, do not address the specific issues in the instant matter. [The beneficiary] has the **pre-requisite** training in the general field of dental technology, but absolutely no training in the "proposed field" of training [emphasis in original].

The AAO agrees with counsel's analysis. The petitioner has consistently maintained that training as a dental technician is a prerequisite for enrollment in its training program. The petitioner has also maintained since the outset of its filing that the beneficiary has no experience in the field of dental implants, as such training does not exist in Japan. In support of this claim, the petitioner has submitted

supporting letters from an instructor at the Nihon University Dental Technology Training School and dental practitioners in Japan.

It appears that the beneficiary does not have substantial training and expertise in the proposed field of training, as the opportunity for this training does not exist in his home country and there is no evidence that he has received any other kind of training in this field. The AAO finds that the petitioner has established that the beneficiary does not already possess substantial training and expertise in the proposed field of training, and finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(C). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The director also found that the petitioner had failed to establish that the proposed training program is not designed to extend the beneficiary's total allowable period of practical training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(H) precludes approval of petition in which the proposed training program is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student. The director misapplied this regulation, as it only applies to extensions of optional practical training granted to students following F-1 student education. It does not apply to individuals who have received training in J-1 status. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(H) and, accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The petitioner has overcome each ground of the director's decision and, accordingly, the director's decision is withdrawn.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.