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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted] **Public Copy**

AUG 1 2001

File: EAC 00 186 52137 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Migra L. Roseley
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is an architectural design company. It seeks classification of the beneficiary as an architectural model maker trainee for a period of two years. The director determined that the petitioner has not demonstrated that the proposed training is not available in the beneficiary's own country. The director also determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. Finally, the director determined that the training program offered is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

On appeal, counsel states that the cases cited by the director are irrelevant to the facts of this case. Counsel also states that the proposed training at this level of sophistication and detail is not available in Japan. Counsel asserts that the training is a structured and specific program. Counsel also asserts that the beneficiary will gain a wealth of knowledge from this training. Additional evidence has been submitted with the appeal.

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 to 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 petitioning entity was established in 1983 and its gross annual income is currently \$12.7 million. The training program consists of small seminars, independent study and a model design laboratory. The study is complemented through active involvement under a mentor guidance program in ongoing architectural projects. The instruction will be conducted in small groups using a seminar format. The seminars are presented on a set schedule to all trainees from 9AM to 5PM on all normal workdays. The training is conducted and coordinated by the manager of the modeling department. The beneficiary will work closely with the project managers, who will also act as adjunct instructors, who will meet with her daily to discuss her progress. A progress review session will be held on alternate Fridays. The seminar schedule is as follows: Introduction (3 months), Philosophy and Architecture (3 months), Tools of the Trade (12 months), Project Management (2 months), Management of International Projects (2 months), and Observations and Independent Follow-Up Studies (2 months). The petitioner has demonstrated that it has a structured training program.

Counsel asserts that the proposed training is not otherwise available anywhere in the world. Counsel has shown that the petitioner's modeling department consists of a highly educated and experienced professional staff of eight specialists. Counsel has demonstrated that the petitioning entity specializes in designing large major projects such as convention centers, stadiums, university campuses, etc., and entering design competitions. Counsel states that the petitioner's projects require an extensive and highly advanced use of presentation material such as prototypes, panorama projections, fly-by animations, etc. Counsel contends that the beneficiary will be developing expertise in the petitioner's techniques for the presentation, design and management of complex, interactive public spaces that are specific to the petitioner and highly proprietary. The petitioner is known as a leader in 2D schematic drawings and 3D presentations of major projects. Therefore, counsel has now shown that the training is unavailable in the beneficiary's home country.

The beneficiary has an associate degree in interior design and one year of experience with this firm. The college coursework that the beneficiary completed has been shown to only be a foundation for training in architectural modeling. During her period of practical training, the petitioner noticed that she showed an excellent

aptitude for modeling. Accordingly, the beneficiary has not been shown to already possess substantial training and expertise in the proposed field of training. Further, the training program offered is not designed to extend the total allowable period of practical training previously authorized to the beneficiary.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.