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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



Public Copy

File: EAC 99 238 51057 Office: Vermont Service Center

Date: JUL 16 2001

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:



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

*Myra L. Rosenly*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** This is a motion to reopen the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. This motion to reopen will be granted and the previous decision of the Associate Commissioner for Examinations will be affirmed in part.

The petitioner is a hotel. It seeks classification of the beneficiary as a food and beverage management trainee for a period of 20 months. The director determined that the petitioner had not demonstrated that the training will benefit the beneficiary in pursuing a career outside the United States. The director also determined that the beneficiary already possessed substantial training and expertise in the proposed field of training.

On appeal, the Associate Commissioner for Examination's determined that the petitioner had demonstrated that the training will benefit the beneficiary in pursuing a career outside the United States, and therefore, had overcome that portion of the director's objectives. The Associate Commissioner affirmed the part of the director's decision that stated that the beneficiary already possessed substantial training and expertise in the proposed field of training. Finally, the Associate Commissioner, beyond the decision of the director, determined that the petitioner had not demonstrated that the proposed training is not available in the beneficiary's own country.

Counsel states on motion that the petitioner's response to the Service's request for additional evidence was reasonable, specific and sufficient to document that the proposed training is not available in the beneficiary's home country of Nepal. Counsel also states on motion that the beneficiary was studying hotel and resort administration as a J-1, exchange visitor, and not as an F-1, student. Counsel further states that the beneficiary does not have any practical training or experience in the proposed field that would render her ineligible for an H-3 classification.

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.

On motion, counsel submitted three letters from the top ranking four star hotels in Nepal. The letters indicate that the Nepalese hotel industry training programs are not very developed around the use of the latest technology. The petitioner's training program focuses on knowledge of and skills in computer applications for the hotel and restaurant industry. The petitioner has now shown that the training is not available in the beneficiary's home country.

The record indicates that the beneficiary will receive a Bachelor's degree in Hotel and Resort Administration this summer from New Hampshire College. The petitioner states that the beneficiary has no formal training or experience in the field of food and beverage management other than what was learned theoretically in college. However, absent the beneficiary's college transcript and work experience the petitioner has not shown that the beneficiary does not already have substantial training and expertise in the proposed field of training.

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 not met that burden.

**ORDER:** The order of September 14, 2000 is affirmed in part. The petitioner has not shown that the beneficiary does not already have substantial training and expertise in the proposed field of training.