



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



DS

File: WAC 00 267 52294 Office: California Service Center

Date: JUL 20 2001

IN RE: Petitioner:
Beneficiaries:



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: Self-represented

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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

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

The petitioner engages in radiation protection services. It seeks classification of the beneficiaries as radwaste/decontamination services technician trainees for a period of six months. The director determined that the petitioner has not demonstrated that the proposed training is not available in the beneficiaries own country. The director also determined that the petitioner has not demonstrated that the beneficiaries will be able to utilize the training received in the United States.

On appeal, the petitioner states that the beneficiaries will receive training in the actual techniques used to control and clean radioactive contamination. 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 record indicates that the beneficiaries are employed by Bartlett de Mexico, a Mexican incorporated business. The beneficiaries will be responsible for radiological safety and decontamination activities at the Laguna Verde Nuclear Power Station, located near Veracruz, Mexico, and assisting other workers in keeping their exposure to radioactive material as low as possible.

The petitioner states that Laguna Verde Nuclear Power Plant is a relatively new nuclear power plant which has been operating for less than six years. The Laguna Verde Nuclear Power Plant is also the only commercial nuclear plant in Mexico. The petitioner explains that the training cannot be obtained in the beneficiaries own country because the trainees need to encounter actual in-field situations in areas that have become contaminated. The petitioner states that there is a limited ability to perform in-field training at the Laguna Verde Nuclear Plant in Mexico since the site has been operating for a significantly shorter period of time and general contamination levels have not fully reached the levels which could be encountered at older nuclear plants in the United States. This experience will allow the trainees to evaluate situations in which contamination is minor and situations which could include high-level contamination and a greater personal hazard. Further, there are various techniques ranging from hand-wiping areas to the use of sophisticated mechanical devices that can be used to remove radioactive contamination. The trainees will receive training in working with these specialty decontamination equipment. Therefore, the petitioner has established that this type of training is unavailable in Mexico.

There are two basic designs of nuclear power plants, pressurized water reactor and boiling water reactor plants. The Laguna Verde Nuclear Plant is a boiling water reactor plant. The U.S. facility at which the beneficiaries are being trained is a pressurized water reactor plant. The petitioner states that the beneficiaries will be able to utilize the training received in the United States even though the nuclear plant's reactor design is different in Mexico. The petitioner has shown that the training in the actual techniques used to control and clean radioactive contamination can apply to either boiling water reactor plants or pressurized water reactor plants and that the designs share the most common radiological conditions. Therefore, the systems training will give the beneficiaries the opportunity of utilizing the training received outside the United States.

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.