



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



DS

File: WAC 99 251 54728 Office: California Service Center

Date: JUL 20 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: [Redacted]

INSTRUCTIONS:

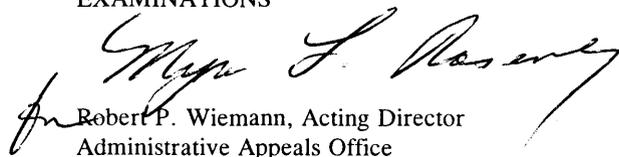
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

  
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 specializes in the design and manufacture of commercial and individual inflatable boats. It seeks classification of the beneficiary as a product service manager trainee for a period of 22 months. The director determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also determined that the petitioner has not demonstrated that the beneficiary will not be placed in a position which citizens and resident workers are regularly employed. The director decided that the petitioner did not establish that the beneficiary will not engage in productive employment. The director also decided that the petitioner did not establish that the training will benefit the beneficiary in pursuing a career outside the United States.

On appeal, counsel states that the Service erred in matters of fact and law denying the H-3 petition.

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 beneficiary seeks training in constructing inflatable boats using hot air welding equipment and also in designing techniques using computer aided design and computer aided cutting tables. The petitioner states that such industry specific training based on American inflatable boat construction techniques is not available in the beneficiary's country of South Africa. The petitioner has also submitted evidence attesting to the unavailability of such training in South Africa. Accordingly, the petitioner has demonstrated that the proposed training is not available in the beneficiary's own country.

The beneficiary's eventual placement as a product service manager will be with the petitioner's associate abroad. Therefore, it has been established that the training will benefit the beneficiary in pursuing a career outside the United States.

The training program offered by the petitioner takes 22 months for completion. The training program is divided into four divisions which are: orientation and office administration, business administration, technical theory instruction and computer-assisted product and design, and product knowledge: composition, manufacture and maintenance of high-technology, durable inflatable boat products. The petitioner has shown that 50% of the program will be devoted to academic instruction and 50% of the program will be devoted to supervised training. The beneficiary will also be encouraged to augment this instruction by attending outside industry seminars and by enrolling in additional external academic instruction and course work. The incidental productive employment will constitute approximately 10% of the period of supervised practical training or 5% of the entire program. The beneficiary will not be utilized to perform productive duties. Therefore, the petitioner has demonstrated that the beneficiary will not be engaged in any productive employment and will not be placed in a position which citizens and resident workers are regularly employed.

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.