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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



File: LIN 00 234 54004 Office: Nebraska Service Center

Date: JUN 11 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)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a video and event production company. It seeks classification of the beneficiary as a video production trainee for a period of one year and three and one-half 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 beneficiary already possessed substantial training and expertise in the proposed field of training. Finally, the director decided that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation.

On appeal, the petitioner states that the training post it is offering meets the visa requirements.

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 petitioner states on appeal that the BTEC course in media studies that the beneficiary completed is a pre-college, one-day per week course, and serves only as an introduction to the media industry. The petitioner goes on to state that the course is a text-based course and offered very limited practical hands-on experience. Therefore, the petitioner has shown that the beneficiary does not already possess substantial training and expertise in the proposed field of training.

The training program is based on a minimum of 30 hours per week, Monday to Thursday, from 9:00AM to 5:00PM. The beneficiary has five areas to be trained in: staff meetings (5 hours per week), edit instruction (7 hours per week), hands-on editing (10 hours per week), tape logging (7 hours per week), and meeting with partner (1 hour per week). The beneficiary must also complete two work manuals. Upon review, the training program has no fixed course schedule and instructors. The petitioner states that the edit training will be carried out by an on-staff and a freelance editor, however, those are the only instructors listed in the training program. Moreover, the petitioner has not explained how they will function as instructors and still be able to perform their duties. The company currently has a staff of six employees. The petitioner has not presented a structured training program.

The petitioner explains that its company is in a special niche of video case study production that is unique in the industry and as a result, training for this niche is only available in our Seattle office. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in his own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. 18 I&N Dec. 164 (Comm. 1981). No evidence has been presented that such training does not exist in the beneficiary's home country.

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 appeal is dismissed.