



DS

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

JUN 18 2001

File: WAC 00 043 50519 Office: California 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)

Identification data omitted to prevent clearly unwarranted invasion of personal privacy.

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*  
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 dismissed.

The petitioner is engaged in the business of providing accommodations for visiting foreign students and tourists with moderate budgets. It seeks classification of the beneficiary as a manager trainee for one year and six months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, the petitioner states that a detailed training program now exists and will be forwarded 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 training program is designed to provide its manager trainees with parallel training in the procedural, operational and social aspects of personnel property, money, and other facets of hostel management. Upon completion of the training, the beneficiary will be fully qualified to manage any of the petitioner's international establishments. The training program consists of two months of observation, eleven months of detailed seminar and discussion sessions, four months of traveling through the U.S. lodging in hostels, and one month of role-play assessment sessions and evaluations. The petitioner has now shown that the training program is designed so that the beneficiary will not engage in productive employment.

On appeal, the petitioner has revised its training manual. However, the in-house training program submitted with the appeal still does not demonstrate a structured training program. The training program indicates that the first two months of training will consist of the beneficiary observing the hostels in Hollywood and San Diego, California. This portion of the training is not structured; there is no fixed time schedule, instructors, or supervision. For the next 11 months, the training program is only for four hours a day and the instructors are the district managers. The petitioner does not explain how the district managers will train and supervise the beneficiary and still be able to perform their duties and operate the business. The next four months, the beneficiary will travel through the United States lodging in hostels. Again, there is no time schedule, supervision or instructors responsible for this portion of the training program. The petitioner has not presented a structured training program. For this reason, the petition may not be approved.

The petition cannot be approved for additional reasons. Counsel states that the training is unavailable in the home country of the beneficiary since hostels run by entities in Canada possess different management techniques and do not offer training programs for management applicants. The assertion of counsel does not constitute evidence. [REDACTED] 19 I&N Dec. 1, 3 (BIA 1983); [REDACTED] 19 I&N Dec. 533, 534 (BIA 1988); [REDACTED] 17 I&N Dec. 503, 506 (BIA 1980). 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. [REDACTED] 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.