



U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: EAC 01 029 53247 Office: Vermont Service Center Date: OCT 30 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: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

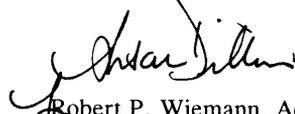
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 that 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 that 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious order which seeks to train the beneficiary as a religious sister for an additional period of one year. The director denied the petition because the beneficiary's training period will exceed two years.

On appeal, the petitioner argues that this is an extraordinary circumstance and that the Service should exercise its discretion in a favorable manner.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii) describes an H-3 trainee as:

Having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education in a training program that is not designed primarily to provide productive employment

....

8 C.F.R. 214.2(h)(7)(ii) provides a list of criteria for H-3 training programs. A training program may not be approved which exceeds the total allowable two-year period. See 8 C.F.R. 214.2(h)(15)(ii)(D).

The beneficiary entered the United States in H-3 status on December 26, 1998 and has been in the United States for two years. The petitioner now requests that the beneficiary's authorized stay in H-3 status be extended for an additional year. In view of the foregoing, it is concluded that the petition may not be approved.

It is noted that there is no provision in the statute or the regulations which permits an extension beyond the two year limitation unless the beneficiary does not reside in the United States and her employment is seasonal, intermittent, or an aggregate of six months or less. The beneficiary has resided continuously in the United States since December 26, 1998. Accordingly, the beneficiary's period of stay may not be extended.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.