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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

File: EAC 01 170 53351 Office: Vermont Service Center

Date: 27 FEB 2002

IN RE: Petitioner:  
Beneficiary:



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

**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, 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 sustained and the petition will be approved.

The petitioner is a non-profit environmental firm which seeks to employ the beneficiary as a communications intern for a period of three months. The director determined that the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business. The director also found that the petitioner had not shown how the training would help the beneficiary to pursue a career in Canada or that the training is not available in Canada. Finally, the director found that the training program lacks a classroom element.

On appeal, the petitioner argues that it has complied with the pertinent regulations.

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) provides a list of criteria for H-3 training programs. The petitioner must demonstrate that the proposed training is not available in the beneficiary's own country, that the training is not productive employment beyond that which is necessary to the training, and that the proposed training is not in the normal operation of the petitioner's business. In Matter of Koyama, 11 I&N Dec. 424 (Reg. Comm. 1965), the regional commissioner determined that a petition for an H-3 trainee was properly denied because the training program was excessive in length, repetitious, and would consist principally of on-the-job experience.

The petitioner argues persuasively that the beneficiary will be trained in the petitioner's proprietary and specialized methods and procedures. This training is unique to the petitioner and can only be received from the petitioner.

The petitioner has provided an outline of the proposed classroom training which demonstrates that the proposed training is a well-rounded training program in environmental communication. However, it is clear that the training will include a substantial amount of on-the-job training. In Matter of St. Pierre, 18 I&N Dec. 308 (Reg.

Comm. 1982), the Commissioner held that a training program which consists primarily of on-the-job training may be approved when the subject matter by its very nature can only be learned in that setting. The petitioner has demonstrated that the proposed training is not available in Canada because Canada does not have environmental organizations of the calibre of the petitioner or resources comparable to those in the United States. Finally, the petitioner has shown that the purpose of the training is to allow the beneficiary to pursue a career in environmental communications in Canada. In view of the foregoing, it is concluded that the grounds for denial have been overcome.

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 sustained that burden. Accordingly, the decision of the director will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.