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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



File: SRC 98 212 50571

Office: Texas Service Center

Date: 02 JUN 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)

will be used to prevent clearly unwarranted invasion of personal privacy.

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, Texas Service Center. The matter was remanded to the Director for further action and consideration. The Director again denied the petition and certified her decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is an air conditioning and heating firm which seeks to train the beneficiary as a plumber and solar system installer for a period of ten years. The director determined that the proposed training consists primarily of on-the-job training.

The petitioner has not responded to the notice of certification.

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 establish that it has sufficient physical facilities and trained manpower to provide the training specified. The petitioner must document the existence of a structured training program consisting of both classroom and on-the-job training. Matter of Sasano, 11 I&N Dec. 363 (Reg. Comm. 1965), held that a training program that consists primarily of on-the-job training is not a suitable program to classify an alien as an H-3 trainee.

The petitioner has not shown that it has sufficient facilities and trained manpower. The petitioner has not provided insufficient evidence of a structured training program. In addition, that training program consists primarily of on-the-job training. In view of the foregoing, it is concluded that the petition may not be approved.

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.