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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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FILE: WAC 00 116 53609

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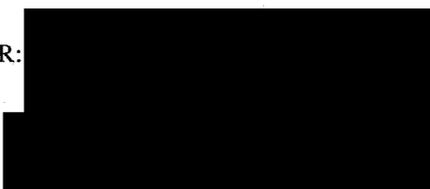
DATE: 11 SEP 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

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

The petitioner employs five persons and has a gross annual income of over \$500,000. It seeks to train the beneficiary in the fields of architecture and urban design for a period of two years. The director determined that the petitioner had not established that the proposed training is not available in the beneficiary's home country. The director also found that the petitioner had not provided evidence of a structured training program.

On appeal, the petitioner has provided additional information regarding the beneficiary's training. Counsel explains that the beneficiary's training will enable him to develop business and design opportunities for the petitioner in France.

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. The petitioner must demonstrate that the beneficiary will not engage in productive labor unless such employment is incidental and necessary to the training. The petitioner must also demonstrate that the proposed training is not available in the beneficiary's own country and that 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 employed. The petitioner must also establish that the training will benefit the beneficiary outside the United States. 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 outlines the training program as:

The training program Mr. Taousson will undergo will enable him to develop business and design opportunities for us upon his return to France. This program will

involve formal training combined with supervised training in all aspects of architecture and urban design. Mr. Taousson will be exposed to all facets of the architectural profession, including drafting (manual or on computer), rendering, modeling, design, preparation of construction documents, as well as processes of construction administration and client interaction.

This training program appears to consist of primarily productive employment and on-the-job training doing tasks such as drafting, rendering, modeling, designing, and preparing construction documents. It is determined that the petitioner has failed to demonstrate that the beneficiary will not engage in productive labor that is incidental and necessary to the training.

To show that this training is not available in France, counsel explains that in the United States, all graduate architects are required to work for a period of time (two to three years depending on the amount of professional education they have received). Counsel states that this is not the case in Europe, where architects achieve licensure immediately upon graduation from a university. Counsel further states that for this reason, this type of training program does not exist in the beneficiary's home country.

Counsel's assertions concerning the unavailability of architecture and urban design training in France are not persuasive. It is noted that the assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is determined that the petitioner has failed to provide evidence that the proposed training is not available in France. Therefore, the visa petition may not be approved for this second reason.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.