

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services

D
5

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

[REDACTED]

DEC 01 2003

FILE: SRC 02 064 50242 Office: TEXAS 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)

ON BEHALF OF PETITIONER:

[REDACTED]

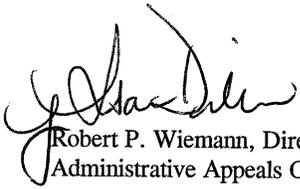
INSTRUCTIONS:

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 Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is a restaurant. It seeks classification of the beneficiary as a management trainee for 22 months. The director determined that the training is primarily on-the-job training, which does not establish the beneficiary's eligibility for classification under Section 101(a)(15)(H)(iii) of the Act. In addition, the director determined that the proposed training had no fixed schedule, objectives or means of evaluation, which requires that the petition be denied. 8 C.F.R. § 214.2(h)(7)(iii)(A). The director also determined that the petitioner had not established that the training is unavailable in the beneficiary's home country, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(1).

Counsel did not submit a brief or any additional evidence upon notification of certification to the AAO. The record is complete.

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 for 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 record, as it is presently constituted, contains: a copy of the management training program; the beneficiary's resume and educational documents; a copy of the beneficiary's passport and I-94 card; the petitioner's corporate documents, including tax returns; and a copy of the petitioner's menu and training program for culinary students.

The first reason for the director's denial is that the training program deals in generalities. The regulations forbid approving a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner has not established that the training program does not deal in generalities. The proposed training program is presented in an outline format. It is broken down by topic and length of time designated to cover the topic (i.e., "Food & Beverage, One-on-One Training, 60 hours, Supervised Exposure, 320 hours; "Human Resources, One-on-One Training, 40 hours; Supervised Exposure, 260 hours," etc.). The timelines need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations. There is no structure provided as to how the information is going to be taught, nor is there any detail about what actually will transpire over the designated training time. Additionally, the hours allotted for the management training program equal less than nine months of training, rather than the 22 months the petitioner and counsel describe. The petitioner's December 13, 2001 letter describing the terms of the training describe a training structure that does not clearly relate in any way to the management training program.

The second ground for the director's denial is that the training is primarily on-the-job training. The director relied on *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965) in making this determination. She stated that Citizenship and Immigration Services (CIS), had previously:

[W]ithheld classification as a trainee (H-3) where the beneficiary was to be engaged primarily in on-the-job training. In that case, while the beneficiary was to supplement his training with some classroom instruction, the petition was denied upon a finding that the majority or primary part of the training proposed was to be on-the-job training. In the instant petition, because the proposed training is comprised mostly of on-the-job training, the proposed training does not establish the beneficiaries' eligibility.

The instant petition can be distinguished from *Sasano*. The beneficiary in that case was to be the sole employee whose entire training was to be on-the-job productive employment, supplemented by unscheduled trips to hear university lectures. On-the-job training is not, by definition, always productive employment, and so, in some cases, training that is primarily on-the-job can still qualify for H-3 classification. In this case, it is not clear how much time will be spent in classroom training and how much will be on-the-job training. As described above, there are two versions of what the training encompasses. The two versions do not seem to be describing the same program, and neither is adequate for purposes of the regulations. In the director's request for evidence, she requested a breakdown of actual hours in classroom instruction and the number of hours in practical training. Counsel did not respond directly to this question, responding instead, "The training program provides an outline a [sic] breakdown of the hours spent in theory classes and in practice, which can be determine [sic] as on-the-job training." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The final ground for denial is that the petitioner did not establish that the training is unavailable in the beneficiary's home country. Restaurant management training is certainly available in the beneficiary's home country. The petitioner states that the beneficiary must train with the petitioner because the petitioner wants to follow the pattern of McDonald's, by homogenizing the quality and standards of its restaurants in multiple locations. As there is currently only one restaurant site, and the petitioner wants to train the beneficiary in its own practices and procedures, it is determined that there is no equivalent training in the beneficiary's home country. The director's comments on this matter are withdrawn.

Beyond the decision of the director, the petitioner has not established that the training will benefit the beneficiary in pursuing a career outside of the United States. Counsel asserts that the petitioner intends to open a number of restaurants in South America and that the beneficiary will be hired to work in the Buenos Aires, Venezuela restaurant. The petitioner provided no evidence as to the construction or establishment of these restaurants. Nor is there any proof of a contract between the petitioner and the beneficiary to establish that he will work for the petitioner subsequent to the training program. The petitioner's statement, by itself, that the training program is intended to prepare the beneficiary for employment with the petitioner, is insufficient. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the petition is denied.

ORDER: The director's July 11, 2002 decision is affirmed. The petition is denied.