

U.S. Department of Homeland Security

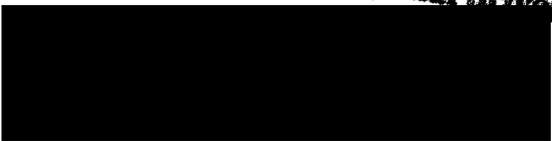
Citizenship and Immigration Services

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

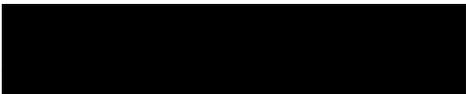


FILE: SRC 01 246 52664 Office: TEXAS SERVICE CENTER

Date:

DEC 03 2003

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)

ON BEHALF OF PETITIONER:



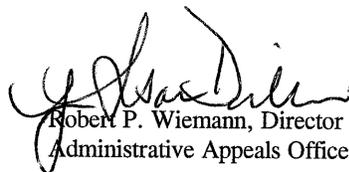
INSTRUCTIONS:

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 (CIS) 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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a country club. It seeks to extend classification of the beneficiary as a management trainee. The director determined that the training program is on behalf of a beneficiary who already possesses substantial training and expertise in the field of the proposed training.

On appeal, counsel submits a brief stating that the director erred in asserting that the petitioner is required to demonstrate that proposed training is available in the beneficiary's home country. Counsel also states that the director misread the law regarding whether the beneficiary has substantial training and expertise. Finally counsel states that the director appears not to have received the 200-page training program, which answers all of the questions posed.

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: several letters from both counsel and the petitioner; the petitioner's business documents; a copy of the management training program; copies of the beneficiary's passport and I-94 card; and the beneficiary's resume, academic documents and letters of reference.

It is not clear why counsel states on appeal that the director erred in asserting that the petitioner is required to demonstrate that the proposed training is available in the beneficiary's home country and that the director appears not to have received the 200-page training program which answers all of the questions posed. Neither of these issues was raised in the director's decision.

The director did determine that the beneficiary already possesses substantial training and expertise in the proposed field of training. This decision is based on the petitioner's statement that the beneficiary had already received one year of training with the petitioner, and also has extensive prior experience in his home country. The original training program was structured for one year, but counsel stated in the response to the request for evidence:

Boca West Country Club developed a training program of such importance and magnitude due to the number of trainees and the educational significance, but at the same time the Organizational Committee of the program established an erroneous terms [sic] in time frame for the program. At this moment we request that the term of the program can be [sic] extended for approximately ten months because the program has not finished and the third stage is very important as above mentioned.

The petitioner's letter, dated August 7, 2001, provides information regarding the structure of the training. It states

that the third stage of training, the one stage remaining for the beneficiary to complete according to the petitioner and counsel, will include four days per week in the trainee's "home department," which is the department in which the trainee spent six months previously, according to the training schedule. One day per week for approximately eight months would be spent in one of the six other departments, and the last four weeks would be spent in the six departments. The beneficiary has already spent one year in training with the petitioner, a period that was originally to be the entire training program. The revised training program allows 12 weeks for management training, six months in a field of specialization and six months in six of the other fields. The petitioner's description, however, adds ten months to the 12 months that the beneficiary has already trained, with the bulk of the time spent in the same department where the beneficiary already spent six months in training, and only the equivalent of approximately 10 weeks in any of the other departments. The position is called management trainee, but is described as training in preparation for the beneficiary to return to his home country to recruit seasonal workers for the petitioner. The petitioner never states when exactly in the course of the beneficiary's training the program changed from 12 months to 22 months. The petitioner's general manager does state, however, that the beneficiary has completed the first and second stages, which would take nine months of training time according to the information submitted. It is not known how the beneficiary spent the final three months of his first year of training. It is determined that the beneficiary does, in fact, have substantial training and expertise in the field of proposed training and the petition can not be approved.

Beyond the decision of the director, the training program deals in generalities with no fixed schedule, and may not be approved per 8 C.F.R. § 214.2(h)(7)(iii)(A). Counsel's February 11, 2002 description of the new training program in the response to the request for evidence indicates that there are three parts to the program. "The first aspect of the training includes 12 weeks of general management training . . . During the second aspect . . . [t]he trainee will dedicate 6 months of their [sic] time to work solely in this field. . . . [During] [t]he third aspect . . . [t]rainees will spend one month in [each of] six of the fields." This amounts to 15 months of training. In the training program submitted, various classroom and supervised exposure trainings are broken down into the number of hours allotted to each segment. The total equals approximately 72 weeks or 17 months of training. The petitioner and counsel state that this is a 22-month program and that the beneficiary requires a 10-month extension to complete

the training. It is not clear how long this training program actually is, as three different timelines have been introduced into the record. As such, it is clear that there can be no fixed schedule.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.