

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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FILE: WAC 03 070 53482 Office: CALIFORNIA SERVICE CENTER

Date: DEC 18 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a medical office. It seeks classification of the beneficiary as a medical assistant trainee. The director determined that the training would consist of productive employment. The director also found that the training is general in nature, without a fixed training schedule. Finally, the director determined that the petitioner had not established that the training is unavailable in the beneficiary's home country.

On appeal, counsel states that there is no productive employment, and the training program is adequate and unavailable in the beneficiary's home country.

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 beneficiary's I-94 card, passport and visa; several letters from the petitioner; a training schedule; the beneficiary's diploma and transcripts; a consular information sheet from the U.S. Department of State regarding the beneficiary's home country; the petitioner's tax return, balance sheet, and profit and loss statement; and the beneficiary's resume.

The director denied the petition stating that the training is general in nature, without a fixed training schedule, objectives or means of evaluation. Counsel asserts that there is a fixed training schedule and objectives. The training schedule submitted with the original petition stated that the training would be in six phases, three that would take 15 weeks each and three that would take 20 weeks each. Each segment is described in narrative form.

The director requested additional evidence regarding the training program:

Provide documentary evidence specialty [sic] and qualification of the trainer(s) including name and credential [sic]. . . . Describe the proportion of time that will be devoted to classroom instruction, on-the-job training, and productive employment including supervision be [sic] given and the structure of daily training program. What means of evaluation is being used to evaluate training. Written tests? Practical exams?

Counsel did not respond to any of these requests. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On appeal, counsel submits some additional information on this issue. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits

some of it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The proposed training program is vague, with little detail about how the training will actually occur and how the beneficiary will be spending her days. In addition, there is no provision for evaluation anywhere in the record. The regulations clearly state that a training program cannot be approved if it deals in generalities with no fixed schedule, objectives, or means of evaluation. 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found that the petitioner did not establish that the beneficiary would not be involved in productive employment. As counsel did not respond to the director's request for additional information regarding this issue until the appeal, the record of proceeding before the director is considered complete. There was no indication of how much time would be spent in classroom training, on-the-job training or productive employment in the evidence initially submitted with the petition. As a result, the petitioner did not establish that the beneficiary would not be primarily engaged in productive employment.

Finally, the petitioner did not establish that the training would be unavailable in the beneficiary's home country. The proposed training is primarily in office administration. The beneficiary has a bachelor's degree in nursing, and is clearly already trained in the portion of the program that involves patient care. Counsel and the petitioner state that the training is unavailable because it involves a state-of-the art medical office, which does not exist in the beneficiary's home country. They did not adequately document their assertion that the unavailability of certain medical technologies would have any impact on the availability of training to become a medical assistant in the beneficiary's home country. 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 AAO notes that the director requested additional evidence relating to ten substantive issues, as well as two requests regarding the beneficiary's nonimmigrant status, and a request for a duplicate petition. Counsel did not respond to any of the substantive questions, and only provided information regarding the beneficiary's status, and the need for a duplicate petition. Again, it is noted that failure to submit requested evidence which

precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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.