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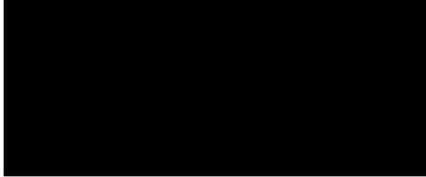
U.S. Department of Homeland Security

Citizenship and Immigration Services

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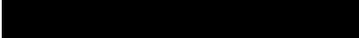
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



**NOV 13 2003**

FILE: SRC 02 016 52535 Office: TEXAS SERVICE CENTER

Date:

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:



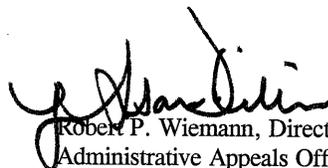
**INSTRUCTIONS:**

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, who then certified the matter to the Administrative Appeals Office (AAO) for review. The decision of the director will be withdrawn and the matter shall be remanded for further consideration.

The petitioner is a resort hotel. It seeks classification of the beneficiary as a senior management trainee. The director determined that the training consists primarily of on-the-job training. Additionally, the director found that the beneficiary already possesses substantial training and expertise.

Neither counsel nor the petitioner submitted any additional evidence upon notice of certification of the decision to the AAO.

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 training program schedule showing an 18-month program; the petitioner's brochure and promotional materials; resumes for two of the trainers; a fact sheet from a consulting company hired by the petitioner to provide training; and notices of prior approvals to support the petitioner's claim that it had received approvals for 65 H-3 beneficiaries for the same training program in 2000 and 2001.

The first ground for the director's denial is that the training is primarily comprised of 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. In this case, while the beneficiary will only have a minimal amount of classroom training (50 hours), the balance of the training is not productive employment despite it being on-the-job training. On-the-job training is not, by definition, always productive employment. The beneficiary will be working under the supervision of a department manager during the training and he will have the opportunity to handle real problems and participate in decision-making. The beneficiary is not filling a vacant position that would otherwise go to citizens or residents, but is instead filling a position

specifically reserved for trainees. It is determined that this basis for the director's decision to deny cannot be substantiated and the director's comments shall be withdrawn.

The second basis for the director's denial is that the beneficiary possesses substantial training and expertise in the proposed field of training because he appears to have a degree from a hotel school. The petitioner submitted the beneficiary's diploma in German, without translation, as evidence. All documents not in English must be accompanied by a certified translation, pursuant to 8 C.F.R. § 103.2(b)(3). No further information regarding the beneficiary's training or expertise, such as a resume, is in the record beyond the petitioner's statement that he "possesses the appropriate academic credentials." Based upon the evidence in the record, there is insufficient information to either affirm or overturn the director's decision.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of the beneficiary's background, training and expertise. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of July 3, 2002 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.