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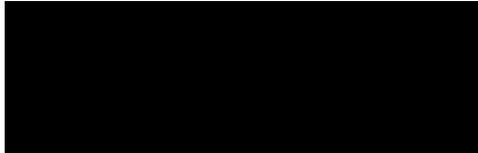
U.S. Department of Homeland Security

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



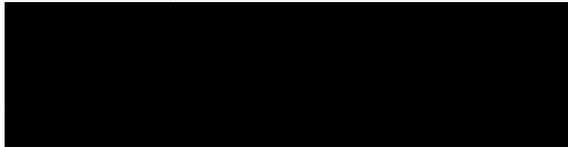
FILE: LIN 03 199 53286 Office: NEBRASKA SERVICE CENTER

Date: NOV 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an e-commerce business. It seeks classification of the beneficiary as a trainee for a period of 22 months. The director determined that the training consists primarily of on-the-job training. In addition, the director found that the training program deals in generalities with no fixed schedule, objectives or means of evaluation. Finally, the director found that the petitioner did not establish that the training is unavailable in the beneficiary's home country.

On appeal, counsel submits a brief stating that the director erred in his decision. Counsel states that the training is not primarily on-the-job training designed for productive employment. Counsel also states that the training is not available in the petitioner's home country. Additionally, counsel asserts that the training is as specific as necessary to meet the terms of the regulations.

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 statement about the petitioner, the beneficiary and the training program; several corporate documents, including a building lease and tax documents; employment contracts between the petitioner and the beneficiary for the training program and for the regular position in France; a number of documents apparently relating to the business in France, but which do not have translations provided; the beneficiary's resume and passport; and photographs of the petitioner's place of business.

The director determined that the training program does not have a fixed schedule, objectives or means of evaluation. A training outline was submitted with the initial petition, breaking the training into weeklong segments, with general descriptions of what would be taught in each week. In counsel's response to the director's request for evidence, he states:

Of the time spent in the classroom, the instructor will be present for one to two hours, with [the beneficiary] spending the remaining four or five hours behind the computer completing his coursework.

Although it is possible to approximate the number of hours necessary to complete each phase of training, it is difficult to be exact for several reasons. Particularly in programming, . . . one can provide specific study tasks but cannot expect expertise in a set amount of time. An area that may take one person an hour to learn may take another person a day or two, depending on how the person chooses to take on the specified task. It is for this reason that the

previously submitted training schedule is not broken out by the hour in complete detail.

The regulations forbid approving a program that "deals in generalities, with no fixed schedule, objectives, or means of evaluation." 8 C.F.R. § 214.2(h)(7)(iii)(A). In this case, the petitioner has not established that there is a fixed training schedule in place or that there is any means of evaluating the beneficiary. Counsel specifically states that any topic could take from one hour to several days to learn. Given that information, it is not possible to state that there is a fixed training schedule or that the training could be completed in the proposed timeframe.

The director also found the training is primarily on-the-job training and, as such, is likely to result in productive employment that cannot be approved. Counsel states that the beneficiary will be spending two-thirds of his time in classroom instruction, and only one-third of the time in on-the-job training. Moreover, since the beneficiary is going to be trained in the petitioner's proprietary and specialized business procedures, portions of the training can only be accomplished through on-the-job training. On-the-job training is not, by definition, always productive employment. In the instant case, the director determined that there would be productive employment as a result of the lack of a structured training program. As discussed above, the training program does not meet the regulatory criteria at 8 C.F.R. § 214.2(h)(7)(iii)(A); however, it does not automatically follow that the training would become productive employment. There is not enough detail provided in the training schedule to determine whether or not the training encompasses productive employment. The director's remarks on this issue are withdrawn.

The final basis for the director's denial is that the petitioner did not establish that the training is unavailable in the beneficiary's home country. Counsel asserts in several submissions that the training is not available and that the beneficiary's home country is far behind in terms of its use of technology and the Internet. Counsel never provides any documentation to support this statement. 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 assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, in searching the Internet, several training programs were found which would provide the bulk of the proposed training in the beneficiary's home country.

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.