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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 19 2003

FILE: WAC 02 195 52850 Office: CALIFORNIA 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)

**PUBLIC COPY**

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

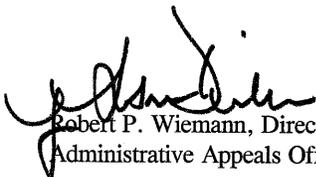
INSTRUCTIONS:

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 sustained. The petition will be approved.

The petitioner is a church. It seeks classification of the beneficiary as a trainee. The director determined that the petitioner did not establish that the training is unavailable in the beneficiary's home country. In addition, the director found that the petitioner had not established the proportion of time that will be devoted to classroom instruction, on-the-job training, and productive employment. As an element of this, the director determined that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation.

On appeal, the petitioner submits a brief. The petitioner asserts that evidence was submitted to show a detailed training program and that a similar program could not be found 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 training program schedule showing a two-year program; a letter from the beneficiary's home church stating that there is no similar training in that country; the beneficiary's degree; an information manual regarding the training program; a letter from the training program stating that productive employment is not allowed; reading assignments and exams for some of the classes; a copy of the beneficiary's passport, visa and I-94 card; and several documents regarding the tax-exempt status of the petitioner.

The director requested additional evidence in nine areas, and then determined that the information submitted in response to two of the requests did not establish the beneficiary's eligibility. He found that the petitioner did not establish that the training is unavailable in the beneficiary's home country. The director quoted the petitioner's response and found that it was not persuasive. The director did not reference and, therefore, appears not to have considered, the letter from [REDACTED] (exhibit 6 in the petitioner's response to the request for evidence). [REDACTED] is an elder in the beneficiary's church in her home country, and states, "There is no such English-speaking training in Malaysia." On appeal, the petitioner states:

[T]he goal of the ministry of the Living Stream Ministry (LSM) and its two-year training program [is] to build up local churches throughout the world. In addition to that, since the [beneficiary's home church] was established and continues to be supplied and follows LSM's ministry, it requires Christian workers who are trained by this ministry and its training.

The petitioner has established that this training is not available in the beneficiary's home country. The director's remarks on this matter are withdrawn.

The director also determined that the petitioner had not established the proportion of time that will be devoted to classroom instruction, on-the-job training, and productive employment. As an element of this, the director determined that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation. The petitioner provided detailed information about the breakdown of classroom instruction and on-the-job training, and clearly stated several times that there would be no productive employment in the training. Additionally, the training schedule was detailed, and provided examples of the means of evaluation. The director also questioned how the training could be given with just four instructors. In the initial petition, as well as in the response to the request for evidence, the petitioner stated that some of the instructors are employees of Living Stream Ministry, which is providing the training, rather than of the petitioner. The balance of the instructors are elders from the churches in the area. The comments of the director on the issue of the general nature of the program are withdrawn.

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 sustained that burden.

**ORDER:** The director's February 5, 2003 decision is overturned. The petition is approved.