

DS

U.S. Department of Homeland Security
Citizenship and Immigration Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

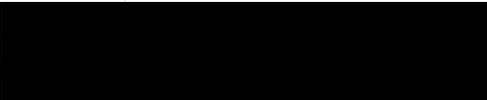
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



NOV 19 2003

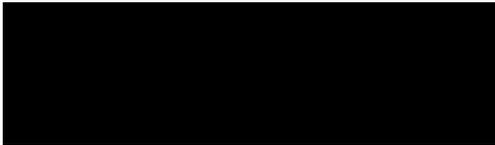
FILE: WAC 02 139 50592 Office: CALIFORNIA SERVICE CENTER Date:

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:



PUBLIC COPY

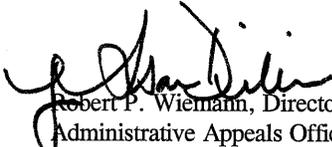
INSTRUCTIONS:

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 dental laboratory. It seeks classification of the beneficiary as a trainee in an advanced cosmetic dental implant training program. The director determined that the petitioner did not establish that the training is not on behalf of a person who already possesses substantial training and expertise in the proposed field of training. In addition, the director found that the training is in a field in which it is unlikely that the knowledge or skills would be used outside the United States.

On appeal, counsel submits a brief stating that the beneficiary does not already possess substantial training and expertise in the field of the training and that he will use the knowledge and skills outside the United States, as shown by the job offer that awaits the beneficiary upon his return to Japan.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality 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 showing a detailed two-year program covering a range of implant restorations and esthetic restorations; a letter from Yoshikazu Watanabe, president of the Nippon Dental University stating that most modern dental procedures are unavailable in Japan, and that dentists and technicians must study abroad to learn the procedures; a letter from [REDACTED] of the [REDACTED] Dental Clinic stating that it is essential for dental technicians to receive training in restorative fabrication and that the training is unavailable in Japan; a letter from [REDACTED] of DenTech International in Osaka, Japan stating that it will reimburse the petitioner for all of the costs of training and will hire the beneficiary upon completion of the training program; a variety of training materials; and corporate documents such as articles of incorporation and tax statements.

The director determined that the petitioner had not established that the training is not on behalf of a beneficiary who already possesses substantial training and expertise. The letter provided by the petitioner to support the initial petition states that the beneficiary graduated from a dental technician course at Nagoya Gakuin School of Dental Technology in March 2002, and that he has no experience as a dental technician other than his academic training.

The petitioner states that the beneficiary has no experience in the field of dental implants, since the training does not exist in Japan. In support of this claim, the petitioner submits a letter from [REDACTED] of the [REDACTED] Dental Clinic; which states, "[I]t is essential that we have dental technicians who are adequately trained in the restorative fabrication process. The program offered by [the petitioner] will provide this much needed exposure, knowledge and training in essential skills which is currently unavailable in Japan."

The petitioner also submits a letter from Yoshikazu Watanabe, President of the Nippon Dental University, which states:

Many dentists travel and study abroad to universities and advanced programs to learn these state-of-the-art [sic] procedures and concepts, especially in the field of implant dentistry, esthetic dentistry, and periodontic dentistry. In order for dental technicians to advance, I believe very strongly for [sic] dental technicians to be given the same opportunity to travel and study abroad after their basic training, to enhance their technical skills and knowledge.

It appears that the beneficiary does not have substantial training and expertise in the proposed field of training. The opportunity for this training does not exist in his home country, and there is no evidence that he has received any other kind of training in this field. Therefore, the comments of the director on this matter are withdrawn.

The director also found that the training is in a field in which it is unlikely that the knowledge or skills would be used outside the United States. In the petitioner's response to the director's request for evidence, counsel submits a letter from [REDACTED] of DenTech International in Osaka, Japan, which states that his company will employ the beneficiary upon his successful completion of the training program. This letter and the others submitted all indicate that there is a need for technicians with these skills in Japan, and that the only way to acquire these skills is to receive overseas training. Therefore, the comments of the director on this ground for denial 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 appeal is sustained. The petition is approved.