

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

D5

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

[REDACTED]

OCT 20 2003

FILE: WAC 02 161 52306 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)

ON BEHALF OF PETITIONER:

[REDACTED]

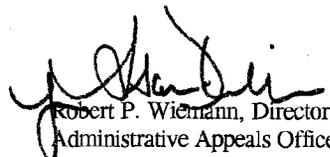
INSTRUCTIONS:

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 jewelry manufacturer. It seeks classification of the beneficiary as a gemologist sorter trainee. The director determined that the petitioner had not established that the training is unavailable in the beneficiary's home country. In addition, the director found that the training program deals in generalities with no fixed schedule, objectives or means of evaluation.

On appeal, counsel submits a brief stating that the director erred in his decision. Counsel asserts that the petitioner submitted substantial evidence to show that training similar to the proposed training cannot be obtained in the beneficiary's home country of Myanmar. Counsel also states that the proposed training program shows in detail the content, schedule and timing of the training, as well as the means of evaluation.

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: several versions of the training program, with some variation as to the details of the program; a letter from a jeweler in the beneficiary's home country stating that he intends to hire the beneficiary upon completion of the program; several letters stating that the beneficiary could not receive similar training in her home country; documents regarding the political and economic situation in the beneficiary's home country; various business and promotional documents regarding the petitioner; and, a letter from another jeweler regarding the petitioner's training program.

The director found that the petitioner had established that the beneficiary's home country was impoverished with low levels of public spending, and poor healthcare and education, but that the information submitted had not established, "[T]he proposed training could not be obtained in an academic or vocation [sic] institution in the beneficiary's native country." The petitioner and counsel submitted evidence regarding the political, economic and human rights situation in the beneficiary's home country. Included in that evidence was information stating that the university system has been essentially shut down since 1988, and that the government is responsible for significant human rights abuses as well as mismanagement of public funds. Given this information, the petitioner has established that the beneficiary could not receive training in an academic or vocational institution that would be similar to the petitioner's proposed training. The director's remarks on this issue are withdrawn.

The director also denied the petition on the grounds that the training program deals in generalities and does not provide for evaluation of the beneficiary. The director stated:

The petitioner has not shown that the classes have a fixed schedule. The training program submitted is presented as an outline. Also the name or names of the

instructors teaching each course is not indicated. Without knowing how long the courses will last or their beginning and ending times, it can not be determined with any certainty that the training program can be completed within the time requested by the petitioner. Finally, there is no record to establish how the beneficiary will be evaluated.

A review of the record reveals that the petitioner did submit some of the information cited by the director as missing from the record. Specifically, in the training description submitted with the initial petition, the petitioner stated:

The trainee will be evaluated formally on a 6 monthly [sic] basis. This evaluation will be in the form of written examinations. The Trainee will be graded according to her proficiency and progress in the program on a pass/fail system. If the Trainee does not meet our high standards, she will be asked to leave the program.

On appeal, the petitioner revised its training program to include the names of the individuals who would be teaching each topic. Additionally, the training program, in all its versions, clearly states how long each course topic will last. The director's comments on these topics are withdrawn.

However, the director's comments regarding the outline format of the training program are supported, and, therefore, the petition cannot be approved. The training program is broken down by topic and length of time designated to cover the topic (i.e., "Business Administration, 3 months;" "Technical Instruction, 14 months," etc.). The topic is then described in a narrative. This structure does indicate that the training program deals in generalities. Some topic areas are more specific than others, but the timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.