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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



OCT 24 2003

FILE: SRC 01 259 50688 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:



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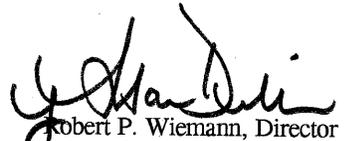
INSTRUCTIONS:

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 Director of the Texas Service Center denied the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be overturned. The petition will be approved.

The petitioner is a thoroughbred horse farm, specializing in breeding and training. It seeks classification of the beneficiary as an international equine marketing and management trainee. The director determined that the proposed training consists primarily of on-the-job training, and the training does not establish the beneficiary's eligibility under Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act). The director also determined that the training program is on behalf of a beneficiary who already possesses substantial training and expertise; as such, the training program may not be approved, per 8 C.F.R. § 214.2(h)(7)(iii)(C). Finally, the director stated that the petitioner had not established that the beneficiary could not receive similar training in her home country.

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 a two-year program covering each major area of farm operation, articles and information about the petitioner's career and reputation, articles regarding the qualifications of the assistant trainer, articles about the state of veterinary training in Europe, and notices of prior H-3 approvals to support the petitioner's claim that he has a well-established training program.

In her denial, the director relied on *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965), stating that what was then the Service, and is now 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 beneficiary's 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 contrast, the beneficiary in this case will be spending approximately 27% of her time in classroom instruction, with the balance being practical and observational training. Productive employment will

make up less than five percent of the beneficiary's training time. The beneficiary will be receiving a significant portion of her training outside the classroom, but there is nothing in the regulations or the case law that forbids this. For these reasons, it is determined that this basis for the director's decision to deny cannot be substantiated and the director's comments relating to the *Sasano* decision shall be withdrawn.

The director found that the beneficiary possessed substantial training and expertise in the proposed field of training because she had been working on another horse farm in H-2B status for almost one year. There is nothing in the record to document what sort of work the beneficiary was performing in that position. The H-2B classification allows an alien to perform temporary non-agricultural labor for one year or less, where the need for labor is a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. See 8 C.F.R. § 214.2(h)(6)(ii)(B). While the beneficiary was working on a horse farm during this time, there is no indication that she was receiving training or gaining any similar expertise to that in the proposed training. The director's comments on this ground of denial are withdrawn.

The director's final ground for denial is that the petitioner did not show that the beneficiary could not receive the same type of training in her home country. In the decision, the director quoted the petitioner's response to a question on the request for additional evidence to demonstrate that the training is not available abroad. The petitioner stated, "The purpose of providing training that is specifically tailored to our business operations is to prepare the beneficiaries to assist us with our desired expansion efforts into Europe." The director determined that the petitioner's comments were not sufficient evidence as to the lack of training opportunities in the beneficiary's home country. The proposed training program will provide a thorough knowledge of the petitioner's particular standards and practices, in anticipation of the beneficiary acting as the petitioner's agent and ultimately managing a similar operation for the petitioner overseas. It is not possible to be specifically trained in the petitioner's marketing and management techniques in Germany. The comments of the director on this issue 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 June 11, 2002 decision is overturned. The petition is approved.