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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

SEP 04 2003

FILE: SRC 03 003 51634 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that engineers, manufactures and imports proprietary automotive engine components. It seeks classification of the beneficiary for a position training as the director of purchasing in an overseas office. The director determined that the training could be received in the beneficiary's home country. The director also stated that it was unclear how the beneficiary would benefit from the training. Additionally, the director stated that the training dealt in generalities.

On appeal, the petitioner submitted a brief and additional information stating that the director incorrectly applied INS policy and that the decision was incorrectly reached based on the evidence submitted. The petitioner reiterated that the beneficiary could not receive the training in her own country and described how the beneficiary would benefit from the training.

Section 101(a)(15)(H)(iii) of 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 documents that describe the training that the petitioner plans to give the beneficiary. In the original petition, there is information about the skills that the beneficiary will be required to utilize in the position, some of which are the subject of the training. A document submitted with the appeal states that the training "consist[s] of personal supervision using actual transactions with our existing business operations in China." It goes on to state the specific kinds of transactions. There are many other documents, both statements by the petitioner and various documentation, regarding the petitioner's business.

The petitioner goes into great detail in his appeal about mistakes made by the director, which had an impact on the decision. Several times, the director did mischaracterize the specifics of information that the petitioner presented in the appeal. The petitioner is clearly correct in this, but the errors presented by the director did not indicate that "a preconceived atmosphere of errors and generalization of testimony is implied that falsely lends credit to the examples cited in rationalizing the denial of the Petition," as the petitioner claims.

In the decision, the director states: "The Service does not find the proposed training is that unique where the beneficiary is unable to receive this training in her own country. The Service understands this training is unique to the petitioner however the petitioner has not established the beneficiary cannot receive this training in her own country. More importantly it is unclear how the beneficiary will benefit from this training."

The training proposed by the petitioner is very specific to his company and its mode of operations. In addition, the company uses software products not only unavailable in Russia in their original state, but which have been modified to meet the petitioner's needs. The petitioner met his burden in demonstrating that the beneficiary could not receive the same training in her own country as that proposed by the petitioner. The petitioner clearly demonstrated that his intention is to hire the beneficiary to work in a planned, but not yet operational, office in Moscow. As such, it is obvious how the beneficiary would benefit from the training. The decision of the director on this issue is withdrawn.

The director determined that the training program deals in generalities and, therefore, it may not be approved pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(A). This regulation forbids approval of a training program which "Deals in generalities with no fixed schedule, objectives, or means of evaluation." There is no indication in any of the evidence submitted that there is a fixed schedule for the proposed training. The petitioner stated that the training would take place over four to six month period, with no specific schedule beyond an eight-hour day. In addition, there is no evaluation structure in place for this training program. These elements clearly preclude approving the proposed training program.

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.

**ORDER:** The appeal is dismissed.