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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[REDACTED]

SEP 04 2003

FILE: SRC 02 022 56400 Office: TEXAS 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]

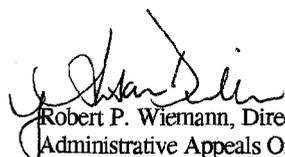
INSTRUCTIONS:

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 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 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 affirmed. The petition will be denied.

The petitioner is a cable television station. It seeks classification of the beneficiary in a program editing position. The director determined that the training program consists primarily of on-the-job training. In addition, the director stated that, according to the regulations, the training program could not be approved because the petitioner had not shown that it had competent trainers for the program. 8 C.F.R. § 214.2(h)(7)(iii)(G).

On notice of certification, counsel submits a brief. In the brief, counsel states that the petitioner met its burden of proof and that the training program consists of structured lessons, rather than on-the-job training. Counsel also states that there is a team of qualified professionals who will provide 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 a schedule of the petitioner's various departments, all of which are presented as areas of training for the beneficiary; information about the petitioner and photographs of the facilities; the beneficiary's resume; and a letter from her university.

The director's first ground for denying the petition is that the training program primarily consists of on-the-job training. In the petitioner's initial submission, it states that the training "process will take place five days a week, eight hours a day. Of those eight hours, four hours will be strictly devoted to personal instruction through a capable employee who will pass on detailed information about the function at hand. The instructor will also provide constructive advice as he/she will directly observe the work of the apprentice. The four remaining hours will be spent by the apprentice applying the knowledge handed down to her." There is no element of classroom instruction included in this description. The Form I-129 gives the length of intended employment as three years.

In a request for additional evidence, the director asked for a breakdown of the number of actual hours in classroom instruction and the number of hours in practical training. The petitioner responded, "University classroom instruction is carried out four hours daily, Monday through Friday, via a virtual campus. Likewise, practical training is carried out Monday through Friday, four hours daily." In response to a question regarding the amount of time spent in on-the-job training, the petitioner responded, "On-The-Job [sic] training consists of eight hours divided into two parts, four hours of lecture and four hours of practical training, Monday through Friday, for 12 months." It is not clear whether these are two approaches to discussing the same phase of the training or two separate phases.

In counsel's brief, the program is described somewhat differently. Counsel states that the beneficiary would attend four hours of lectures each day and then goes on to state:

During the second aspect of the training program, the trainee is placed for specified periods of time, with on-going projects and personnel from Telemiami to allow for 'on-the-scene' observation and question periods. . . . Full program trainees, such as [the beneficiary], must complete each of the training programs, which include classroom instruction (70%) and on-the-job demonstration and drilling (30%). Full program trainees are expected to train at least 30 hours per week. In the case at bar, [the beneficiary], the trainee, spends 8 hours on the premises of the petition, Telemiami Cable Network, Inc. Of these 8 hours, 4 hours (mornings) are spent on University [sic] classroom instructions via virtual communication. Then, on [sic] the afternoons, the trainee spends 4 hours with the project leader in charge of her supervision. Of these 4 hours, the trainee and the project leader spend approximately 1 hour discussing the assignments that trainee has been given as part of her University [sic] journalism curriculum. Afterwards, they also dedicate time to develop awareness of the ethical issues that the trainee is currently studying via the virtual lectures. . . . [T]he training should be for 2 years to afford maximum benefit to the trainee.

The director determined that the above descriptions constituted on-the-job training. Given these varying descriptions, it is difficult to determine exactly how the beneficiary would be trained; however, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The second basis for the director's denial is a lack of proof that there are qualified individuals giving the training. In response to a request by the director for evidence of the educational background and qualifications of the trainer, the petitioner responded that it was unable to obtain all of the documentation and was, instead, submitting a letter from the company president attesting to the trainers' competency. On appeal, counsel submitted the resumes of three of the seven instructors listed on

the petitioner's schedule of the training areas. It is the petitioner's burden to demonstrate the competence of the trainers, and a letter from the president is not sufficient to meet that burden. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Beyond the decision of the director, the Bureau finds that the petition 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 "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." As stated above, the petitioner has submitted three different timeframes for how long the training would last (one, two, or three years). There is no fixed schedule as to how long the beneficiary would spend apprenticing in each division of the company, nor is there a schedule or any detail as to exactly what that training would entail. The only means of evaluation presented by the petitioner is a review at the end of the first and second years. Additionally, there is no schedule submitted for what classes the beneficiary would take, nor any indication of how that coursework would be evaluated.

The regulations require the petitioner to "demonstrate that the proposed training is not available in the alien's own country." 8 C.F.R. § 214.2(h)(7)(ii)(A)(1). The beneficiary will be taking four hours of classes each day from the very university that granted her bachelor's degree in Colombia. Clearly, she could be taking these classes in Colombia rather than in Miami. The petitioner also stated that the beneficiary could not get the same training in Colombia because the communications arena in Colombia is a monopoly and students do not have access to it. The beneficiary is a college graduate with a degree in communications, meaning that, even if the petitioner's statement is true, it does not apply to the beneficiary. Additionally, an Internet search finds several independently owned television stations, negating the concept of a monopoly.

The petitioner stated in its response to the director's request for evidence that the equipment and technology available in Colombia is not current and is far exceeded by that available in the United States. According to 8 C.F.R. § 214.2(h)(7)(iii)(D), a training program may not be approved which "[i]s in a field in which it is unlikely that the knowledge or skill will be used outside the United States." If the equipment and technology is not available in Colombia, then the knowledge and skills acquired

through working at Telemiami clearly will not be able to be used in Colombia. Additionally, on the Form I-129, the petitioner stated that it intends to employ the beneficiary abroad at the end of the training, but submitted no evidence to support that statement. The information submitted about the company does not indicate any foreign offices, and again, if the technology does not exist in Colombia, it is not clear to the Bureau how the petitioner intends to employ the beneficiary.

Beyond these proceedings, the Bureau notes that the beneficiary's resume lists a Miami address, but the Form I-129 indicates that the beneficiary was in Colombia at the time of filing.

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 director's July 3, 2002 decision is affirmed. The petition is denied.