

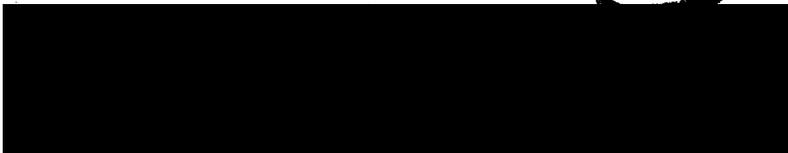
U.S. Department of Homeland Security

Citizenship and Immigration Services

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



JAN 29 2004

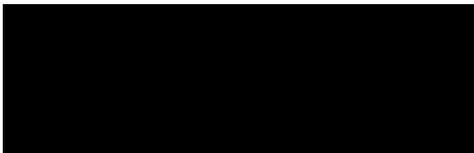
FILE: SRC 02 097 51242 Office: TEXAS SERVICE CENTER Date:

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:



**PUBLIC COPY**

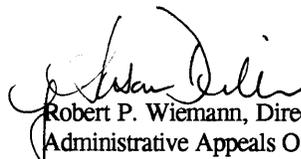
INSTRUCTIONS:

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 Director of the Texas Service Center denied the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner is a home furnishings retail corporation. It seeks classification of the beneficiary as a management intern. The director determined that the training program 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).

Neither counsel nor the petitioner submits any additional information upon certification of the decision to the AAO.

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 copy of the training program describing the type of training and the structure of the training program; two affidavits from E. Mitchell Weatherly, petitioner's Senior Vice President; the petitioner's annual report; and the beneficiary's resume.

In making her decision that the proposed training could not be approved because it was primarily on-the-job training, the director relied on *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965), stating that 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 petitioner stated that the first segment of the beneficiary's proposed training would be 14 days of classroom training, 50 days of supervised in-store practical training and 90 days of in-store on-the-job training. The second segment includes 18 days of classroom training and 102 days of on-the-job training. The final segment is almost entirely observation and supervised on-the-job training. While this schedule is heavily weighted to on-the-job training, it is not productive employment beyond that which is necessary to the training.

For these reasons, the director's comments relating to the *Sasano* decision shall be withdrawn.

Nevertheless, the petition may not be approved at this time. The director did not address whether the training will benefit the beneficiary in pursuing a career outside the United States as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(4). The petitioner stated that the beneficiary would return to Japan to work in his family-owned company, which has been at some time in the past, but is not currently, a vendor for the petitioner. The petitioner has not demonstrated that 18 months of management training, with six of those months focused on the petitioner's sales and merchandising techniques and another six months on sourcing, warehousing and transportation of imported goods to the petitioner's retail locations would be training needed for a career outside the United States.

**ORDER:** The matter is remanded to the director for further action and entry of a new decision in accordance with the above discussion, which if adverse to the petitioner is to be certified to the Administrative Appeals Office for review.