

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



DS

FILE: EAC 05 043 52724 Office: VERMONT SERVICE CENTER

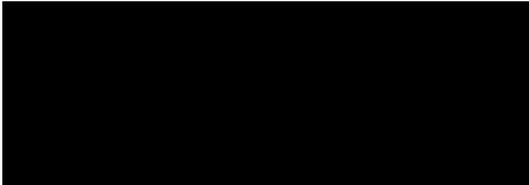
Date: **SEP 16 2005**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an indoor tennis and sports club that seeks to employ the beneficiary as a tennis coach trainee. The director determined that the petitioner did not establish that the training was unavailable in the beneficiary's home country. The director also found that the beneficiary would be engaged in productive employment and that the training is designed to recruit and train aliens for the ultimate staffing of domestic operations. The director stated that the evidence does not describe the type of training and supervision to be given, or the structure of the training program. Finally, the director stated that the beneficiary already possesses substantial expertise in the field of training.

On appeal, counsel submits a brief.

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 of proceeding before the AAO contains: (1) Form I-129; (2) the director's denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, counsel states that the director arbitrarily denied the petition and that he erred in finding that the training program was designed and written by the United States Professional Tennis Registry (USPTR). Counsel states that the purpose of the training is not to fill domestic operations and that the proposed training does not exist in the beneficiary's home country. Counsel also states that the training does not involve

productive employment. Counsel asserts that CIS has approved “numerous H-3 petitions” for the petitioner’s seven tennis clubs over the past five years.

Counsel asserts that the director erred in finding that there is no comparable training program in the beneficiary’s home country, and references the petitioner’s statements in its November 1, 2004 letter of support as evidence to establish this fact. Counsel also references three letters from tennis professionals stating that there are no similar tennis and training programs offered in the beneficiary’s home country. The AAO notes that the content of the three letters is identical. As the letters appear to have been drafted by the same individual, the evidentiary weight of the letters is lessened. CIS may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

The petitioner has not established that the proposed training is unavailable in the beneficiary’s home country.

The director determined that the beneficiary would be engaged in productive employment, and that the petition was filed for purposes of filling domestic operations. The director stated that the USPTR instructor training certification could be completed in 50 days, rather than the 24 months of the proposed training. Counsel states that the director misunderstood the purpose of the training program, and that the program was not designed by the USPTR. Counsel states that some of the training materials were developed by the USPTR, but that the program itself was developed by the petitioner to train the beneficiary in operating a tennis academy or club, while he gets certified as a PTR teaching professional. Counsel asserts that the director’s comments regarding the PTR website and the training provided by the PTR are not relevant to the proposed training. The AAO concurs with counsel that the proposed training and the trainings offered by the PTR are not similar, and that the training is not designed to recruit and train the beneficiary for the ultimate staffing of domestic operations of the petitioner’s business. The AAO does not agree that the proposed training will not constitute productive employment. A salary of \$52,000 per year indicates that the beneficiary would likely be engaged in productive employment. There is no evidence in the record regarding the wages normally paid to the petitioner’s tennis coaches, but in the absence of evidence allowing for a determination that this remuneration is some smaller percentage of a regular coach’s salary, as might be expected of a trainee, the AAO concurs that the beneficiary will be engaged in productive employment in violation of the regulations.

Counsel asserts that identical petitions had been previously approved. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were approved. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied* 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Beyond the decision of the director, the AAO finds that there is no evidence that the training program deals with a fixed schedule, objectives, or means of evaluation. The schedule provided with the petition is very general, broken into three to six month periods with four to six topics for each period. The petitioner also stated that the beneficiary would divide his time between 10-15 hours per week of academic training, and 25-30 hours per week of practical training. The petitioner provided an overview of some of the written training materials to be used in the program. None of the topics in the training schedule includes any additional information beyond a title. For instance, the topics for the period from December 2004 to May 2005 are: head of junior development program; private and group tennis lessons; racquet stringing; staff administration. This gives no information regarding what the beneficiary would actually be doing for this six-month period or how he would be training. It does not provide any specifics to establish that the program does not deal in generalities. For this additional reason, the petition may not be approved.

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. The petition is denied.