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U.S. Citizenship
and Immigration
Services

DS



FILE: SRC 05 100 51233 Office: TEXAS SERVICE CENTER Date: **SEP 16 2005**

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:

SELF-REPRESENTED

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 a ministry that seeks to employ the beneficiary in ministry services. The director determined that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation. The director also found that the petitioner did not establish that the training is unavailable in the beneficiary's home country.

On appeal, the petitioner submits a letter.

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;
- (5) Describes the career abroad for which the training will prepare the alien;

- (6) 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
- (7) 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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation. In its February 10, 2005 letter of support, the petitioner stated that it "provides a comprehensive training program combining essential elements including, but not limited to: mentoring; leadership and character development; ministry-related teaching skills, spiritual development, workshops and seminars. With personal mentoring and on-the-job-type format as the primary methods of training, [the beneficiary] is positioned to learn and demonstrate ministry and leadership development skills." Included with the letter was a job description for a Ministry Service Manager, with a description of the duties and

including the position in a list of the petitioner's operations management team. There is nothing in the record detailing any training structure or specific topics of training. There is no information about the topics to be studied, the texts or resources to be used, or how long each topic will be studied. On appeal, the petitioner describes an evaluation process and describes the fixed schedule:

30 hours per week training plus ministry trips

On a weekly basis: one-on-one leadership mentoring one hour per day three days per week

On a weekly basis: prophetic team leadership training three hours per day one day per week

On a weekly basis: ministry management skill mastery four hours per day five days per week

On a weekly basis: ministry related teaching skills three hours per day two days per week

On a quarterly basis: specialized training and implementation

The AAO concurs with the director that the proposed training deals in generalities and, as such, is not allowed by the regulations.

The director also found that the petitioner did not establish that the training is unavailable in the beneficiary's home country. In her request for additional evidence, the director asked the petitioner to "Submit evidence that this type of training is not available in Jamaica." In response, the petitioner stated:

Our research has shown that there are no similar types of training in Jamaica. Resources such as the Christian Ministry Source book, contacts in the Caribbean, and the internet show different types of ministries: some outreach, some bible schools, some training centers. Many seem to be focused on the local church level, not the ministry organization and development level.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On appeal, the petitioner provides two letters attesting that there is no similar training in the beneficiary's home country. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Beyond the decision of the director, the AAO finds that the petitioner has not established that the training would not be on behalf of a beneficiary who already possesses substantial training and expertise in the field of proposed training. The petitioner states that the training the beneficiary has already received has been "relatively fundamental." The AAO notes, however, that the beneficiary's resume indicates that she has two years of experience with the petitioner in the same position as that of the proposed training. 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.

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ORDER: The appeal is dismissed. The petition is denied.