



U.S. Citizenship
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FILE: EAC 04 236 51176 Office: VERMONT SERVICE CENTER Date: **JAN 19 2006**

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 art school that seeks to employ the beneficiary as a teaching assistant and trainee. The director determined that the petitioner did not establish that the training program satisfies the required criteria for the H-3 visa classification.

On appeal, counsel submits a letter and supporting documentation.

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 training has a well-defined curriculum and an established methodology. Counsel asserts that the training program is one of the few in the United States modeled on the Renaissance discipline of instruction. Counsel further states that the petitioner's previous students have earned numerous merit scholarships from the country's most competitive art institutions. Counsel also asserts that the training is unavailable in the beneficiary's home country, and the training is fundamental to achieving the beneficiary's career goal of working as a traditional animator. Counsel states that the director misunderstood the evidence previously submitted as indicating that the beneficiary had already mastered all of the material

included in the training program. Counsel provides copies of newspaper articles about the petitioner, samples of students' artwork, and an extensive training program.

Counsel states on appeal, "There is nothing even closely resembling this program in [the beneficiary's home country]." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). 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 a trainer and not a trainee, and would be involved in providing training 100 per cent of the time. On appeal, counsel asserts that the director misunderstood the petitioner's training program. While the title of the proffered position is teaching assistant, and the petitioner's letter of support stated that the beneficiary would assist the petitioner "in teaching and assisting students in the full range of classes taught," the letter also stated that the beneficiary would attend numerous classes and he would be either in class or in the studio for 50-60 hours per week. The training program submitted on appeal establishes that the beneficiary's primary role would be as a trainee, rather than as a teacher. The petitioner has established that the beneficiary would be a trainee.

Finally, the director stated that the record does not "provide sufficient documentary evidence, and establish that [the petitioner's] structure and purpose complies with the criteria as outlined" for H-3 classification. Although the director was not specific, the AAO notes that the regulations require that "[t]he training will benefit the beneficiary in pursuing a career outside the United States." 8 C.F.R. § 214.2(h)(7)(ii)(A)(4). The proposed training is for the purpose of preparing the beneficiary to gain admission to the art school of his choice, which will then provide the education needed to pursue his chosen field abroad. The training that is the subject matter of this petition will not, in and of itself, prepare the beneficiary to be an animator following the completion of the training. The proposed training, therefore, does not comply with the terms of the cited regulation.

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.