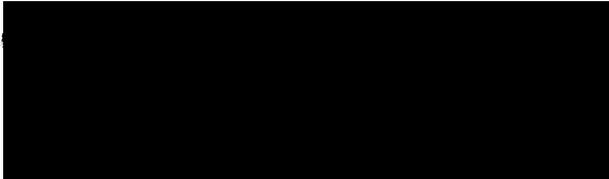




U.S. Citizenship
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FILE: SRC 02 236 71198 Office: TEXAS SERVICE CENTER Date: JAN 19 2006

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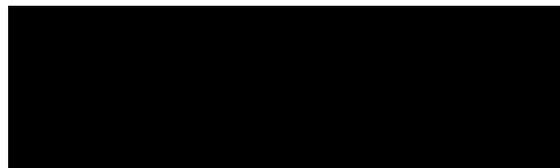
Petitioner:

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 was before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the petition to the director for further consideration. The service center director again denied the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is an automotive engineering company. It seeks to employ the beneficiary as a technologist, automobile mechanic certification program. The director determined that the petitioner did not establish that the training program has a fixed schedule, means of evaluation and does not deal in generalities. The director also found that the petitioner did not establish that the training is unavailable in the beneficiary's home country, or that the training would benefit the beneficiary in pursuing a career outside the United States.

On March 15, 2005, counsel submitted a letter stating that he had only received one page of an undated notice of certification from the director. Counsel stated that the petitioner responded to the director's request for additional evidence following the AAO's remand of the case to the director. He further stated that the director's denial and notice of certification did not afford the petitioner the opportunity to provide further evidence or documentation.

On December 5, 2005, the AAO faxed four pages to counsel, including a cover sheet and the three-page notice of certification from the director. Counsel was informed that he had 30 days to submit a brief or other written statement in response to the notice of certification. As of this date, nothing additional has been received. The record is complete.

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 request for evidence; (3) the petitioner's response to the director's request; (4) Form I-290B and supporting documentation; (5) the AAO's decision remanding the petition to the director; (6) the director's request for additional evidence following the remand; (7) the director's decision denying the petition for abandonment; (8) the petitioner's motion to reconsider and evidence of response to the second request for evidence; (9) the director's decision and certification to the AAO; (10) counsel's letter in response to the certification; and (11) the AAO's fax to counsel providing the director's full decision and notifying counsel of a 30-day window to submit a brief or other evidence. The AAO reviewed the record in its entirety before issuing its decision.

The director determined that the training program deals in generalities with no fixed schedule, objectives, or means of evaluation, as prohibited by 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner responded to the director's second request for evidence by repeating information that had already been submitted. The petitioner did not address the issue of the training schedule or a means of evaluation, and has not overcome the decision of the director that the training program deals in generalities with no fixed schedule, objectives or means of evaluation.

The petitioner stated that there is no industry in the petitioner's home country currently offering this technology (and therefore the training); this statement was previously made in response to the director's first request for evidence. However, there is no evidence in the record to support this claim. 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)).

Finally, the petitioner has not established that the training would benefit the beneficiary in pursuing a career outside the United States. The petitioner stated that there is a "great need to convert the source of fuel combustion for automobile engines." Previously, the petitioner stated that it planned to hire the beneficiary to work in his home country, but the petitioner did not provide any information regarding a plan to establish an office in the beneficiary's home country, nor was any agreement submitted regarding a future employment contract between the petitioner and the beneficiary. Going on record without supporting evidence does not meet the petitioner's burden of proof. *Matter of Soffici*.

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 decision is affirmed. The petition is denied.