

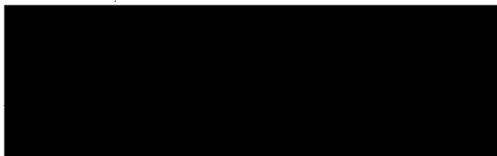


D6

U.S. Department of Justice

Immigration and Naturalization Service

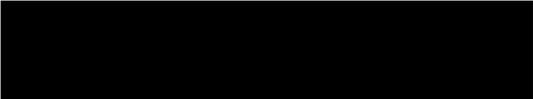
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 157 54097 Office: California Service Center

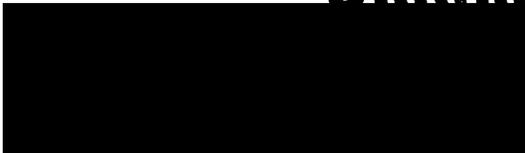
Date: OCT 15 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 the Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to train the beneficiary as a cosmetology instructor/administrator for an additional period of two years. The director determined that the beneficiary's training program would be a repetition of training already received. The director also determined that the petitioner had not established that the proposed training is not available in Canada.

On appeal, counsel argues that the additional training is needed because the beneficiary is training to be an instructor and administrator, not merely a cosmetologist. Counsel asserts that the training is not available in Canada.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii) describes an H-3 trainee as:

Having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education in a training program that is not designed primarily to provide productive employment
.....

8 C.F.R. 214.2(h)(7)(ii) provides a list of criteria for H-3 training programs. The petitioner must demonstrate that the proposed training is not available in the beneficiary's own country. A training program may not be approved which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. In Matter of Koyama, 11 I&N Dec. 424 (Reg. Comm. 1965), the regional commissioner determined that a petition for an H-3 trainee was properly denied because the training program was excessive in length, repetitious, and would consist principally of on-the-job experience.

Counsel argues that the training sought is not available in Canada because it deals with the care of African-American hair. The sole evidence in support of this assertion is a letter from the owner of a beauty salon in Montreal. The writer has not sufficiently explained his sources of information regarding his assertion. The writer has not indicated the number or percentage of employees in Afro-Canadian salons or in Canadian beauty schools who were not trained in Canada. Accordingly, the letter is given little weight.

The training program appears excessive and repetitious. The beneficiary was a cosmetologist when she entered the United States. She was in the United States in H-3 status for nine months at the

time the visa petition was filed. The beneficiary now requests an additional two years. The petitioner has not provided sufficient evidence in support of this apparently excessive request. The petitioner has also failed to sufficiently differentiate between the training received in Canada, the training already received in the United States, and the additional training sought. In view of the foregoing, it is concluded that 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. 361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.