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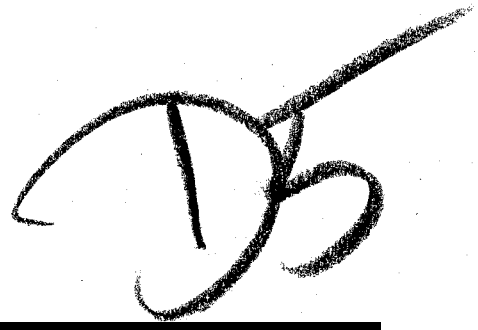
U.S. Citizenship and Immigration Services



[redacted]

FILE: WAC 03 197 51343 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
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)

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ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson
for 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 dental lab. It seeks classification of the beneficiaries as Procera dental lab technicians. The petitioner endeavors to classify the beneficiaries as nonimmigrant trainees pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(iii).

The director denied the petition because the training deals in generalities with no fixed schedule, objectives, or means of evaluation. In addition, the director found that the petitioner did not establish that it has the physical plant and sufficiently trained manpower to provide the training.

On appeal, counsel submits a brief stating that the director erred in making these determinations. Counsel states that the petitioner submitted evidence to establish that the training program has a specific schedule, objectives and means of evaluation. Counsel also states that the petitioner has the physical plant and manpower to provide the training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (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;

(4) 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

(5) 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, in part: (1) Form I-129 and supporting documentation; (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 first basis for the director's denial of the petition is that the proposed training deals in generalities with no fixed schedule, objectives, or means of evaluation. Counsel states that the proposed training clearly states the schedule, objectives and means of evaluation. While the AAO concurs with counsel that the petitioner did provide both the objectives and the means of evaluation, the schedule provided is far too vague to meet the

terms of the regulations. The training program is broken down by topic and length of time designated to cover the topic (i.e., "Week 3 to 5, Review on Dental Materials;" "Week 9 to 12, Dental Die Construction, Set-up and Trimming," etc.). The topic is then followed by a list of sub-topics to be covered. This structure does indicate that the training program deals in generalities. The timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations.

The director also found that the petitioner did not establish that it has the physical plant and sufficiently trained manpower to provide the training. However, as the AAO is dismissing the appeal because the training program deals in generalities, it will not discuss the other grounds for the director's denial.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.