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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D5



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 31 2011

IN RE: Petitioner: [REDACTED]
Beneficiaries: [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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, 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 Christian camp that seeks to employ the beneficiaries as camp ministry trainees for a period of 13 months. The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and, (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States; and, (2) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training. On appeal, counsel contends that the director erred in denying the petition.

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, the following:

- (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.

In its letter of support, dated April 1, 2010, the petitioner stated that it is a "year-round non-denominational Christian camp that covers over 570 acres of hills, forests, and lakes and ministers to around 16,000 people annually." The petitioner established [REDACTED] to "prepare Christian leaders for effective ministry in Christian camping or related fields." The petitioner also stated that the objective of the training is to "receive practical training and planning and management experience in the major operational areas of year-round Christian camping ministry, including an understanding of planning and administration, counseling, financial management, operations, marketing, programming and philosophy (mission)." The petitioner also stated that the training program will run for four seasons of the camp ministry calendar.

The petitioner submitted an outline of the training program that focuses on the following topics:

[REDACTED] and, Paper (trainees will need to write a "100-plus page paper designed to help [REDACTED] integrate classroom principles, 'hands-on' experiences, and personal callings").

The petitioner also submitted a document entitled, [REDACTED] that divides the training into summer, fall, winter and spring. In the summer, the trainees will "serve as youth camp counselors, program instructors, or other summer camp leaders." In the fall, the trainees will "focus on classroom activities: lectures, discussions, reading assignments, special projects, and a major paper," and they also "help host a camp for older adults, a pastor's retreat, and a number of outdoor education and retreat groups." In the winter, the trainees will learn how to ski and how to teach those skills and "assume a variety of leadership roles during [REDACTED] (a teen camp between Christmas and New Year's Eve) and the heavy winter retreat season." In the spring, the trainees will "host retreat groups, teach outdoor education classes, and help close winter program area."

On April 8, 2010, the director requested further evidence documenting eligibility for the H-3 nonimmigrant visas. In a response letter dated, May 4, 2010, the petitioner explained that the training program will benefit the beneficiaries in pursuing a career abroad for the following reasons:

The training the beneficiaries of this petition will receive will equip them to serve in Christian camp ministries abroad, in managerial and executive capacities. [The petitioner] has a strong track record of sending leaders into the field of Christian camping, as evidenced by the letters enclosed herein. There are clearly careers available abroad in Christian camp ministry for which [the petitioner's] [REDACTED]

program equips its trainees. The beneficiaries of this position intend on returning abroad to serve in Christian camp managerial/executive positions.

In addition, in response to the director's request about productive employment, the petitioner stated that the beneficiaries will not be involved in productive employment. Instead, the beneficiaries will "observe all aspects of running a year-round Christian camping ministry." The petitioner also stated that the trainees will "occasionally be involved in hands-on training," and in these cases the staff will directly supervise the trainees.

The petitioner submitted materials that will be utilized during the training program. The petitioner also submitted a document entitled, "Sample Annual Schedule," which outlines a list of responsibilities the trainees will have for each month of the year. The document states that the list "does not detail all of [the petitioner's] or Guest Group retreats," but it provides some understanding of the beneficiaries' schedule. The following are a few of the listed responsibilities that the beneficiaries will have during the training program: [REDACTED] will either counsel or run a program area; [REDACTED] will teach children's Bible sessions, run program areas, rotate through accommodations and kitchen;" "rake leaves, maintain recycling receptacles around camp, snow removal or stocking wood;" and, "prepare for and teach Outdoor Education groups."

Upon review, the AAO agrees with the director's finding that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director determined that the petitioner did not establish that the training program will benefit the beneficiary in pursuing a career abroad. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

On appeal, counsel for the petitioner explains that the two beneficiaries living in Canada will use this training to complete their [REDACTED] in Canada, and the two beneficiaries living in Korea plan to use the training to "actively manage and develop [REDACTED] an organization founded by a [REDACTED] alumnus in Korea."

The petitioner submits a letter from the [REDACTED] that states it will hire [REDACTED] upon completion of the training program and he will "lead our program into more western-style, outdoor oriented ministry." The petitioner submits a second letter from the [REDACTED] that states [REDACTED] will also work with this organization upon completion of the training program.

In addition, the petitioner submits a letter from the [REDACTED] for Prairie College in support of [REDACTED]. The author confirms that [REDACTED] is a student at Prairie Bible College and is pursuing a Bachelor's of Arts degree, with a major in Ministry-

Camping. The author states that the college and the petitioner have a partnership and the training program is necessary for the beneficiary to complete his bachelor's degree.

The petitioner also submitted a letter from [REDACTED] on behalf of [REDACTED]. The author stated, "I know [REDACTED] has the intention to use competencies and skills gained through [the petitioner's] [REDACTED] program when returning abroad to Canada. [REDACTED] intends to use the skills gained in this program to work full time at a camp in a management or director position."

The evidence submitted by the petitioner overcomes the director's concerns and establishes that the training program does prepare the beneficiaries in finding a job in the field of Christian camp ministry abroad. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

The director also found that the petitioner failed to demonstrate that 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires a demonstration that 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

As noted above, the petitioner also submitted a document entitled, [REDACTED] that divides the training into summer, fall, winter and spring and provides a short list of the responsibilities the trainees will have during each season. In the summer, the trainees will "serve as youth camp counselors, program instructors, or other summer camp leaders." In the fall, the trainees will "focus on classroom activities: lectures, discussions, reading assignments, special projects, and a major paper," and they also "help host a camp for older adults, a pastor's retreat, and a number of outdoor education and retreat groups." In the winter, the trainees will learn how to ski and how to teach those skills and "assume a variety of leadership roles during Wintertainment (a teen camp between Christmas and New Year's Eve) and the heavy winter retreat season." In the spring, the trainees will "host retreat groups, teach outdoor education classes, and help close winter program area."

Furthermore, the petitioner submitted a document entitled, [REDACTED] which outlines a list of responsibilities the trainees will have for each month of the year that indicate the beneficiaries will engage in productive employment. The following are a few of the listed responsibilities that the beneficiaries will have during the training program: "[REDACTED] will either counsel or run a program area;" "[REDACTED] will teach children's Bible sessions, run program areas, rotate through accommodations and kitchen;" "rake leaves, maintain recycling receptacles around camp, snow removal or stocking wood;" and, "prepare for and teach Outdoor Education groups."

Although the petitioner stated that the beneficiaries will not engage in productive employment, all of the evidence indicates that the beneficiaries will act as counselors, program managers, maintenance helpers, and instructors. It appears that the beneficiaries will differ from regular employees because they will also have classroom instruction, but a majority of the training program will consist of productive employment by the beneficiaries as they take on the responsibility as counselors, instructors and program managers. The petitioner did not provide sufficient evidence to overcome the director's concern that the training program will result in productive employment beyond that which is incidental and necessary to the training. Again, 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. at 165. The petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(2), 214.2(h)(7)(ii)(A)(3), or 214.2(h)(7)(iii)(E).

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition.

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.