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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: SRC 05 088 50334 Office: TEXAS SERVICE CENTER Date: NOV 14 2005

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)

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.

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 medical professional staffing and placement company that seeks to employ the beneficiaries as U.S. medical practice medical professional trainees. The director determined that the petitioner failed to establish that the beneficiaries possess a full and unrestricted license to practice in their home countries or that the petitioner is authorized to give the proposed training. The director also found that the petitioner did not establish that the training is unavailable in the beneficiaries' home countries. The director stated that the petitioner did not establish that any productive employment would be incidental to the training and that it would not result in the displacement of a resident of the United States.

On appeal, counsel submits a brief.

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)(i)(B) states, in pertinent part:

> (B) A petitioner may seek H-3 classification for a nurse who is not H-1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:
>
> *(1)* The beneficiary has obtained a full and unrestricted license to practice professional nursing in the counry where the beneficiary obtained a nursing education, or such education was obtained in the United States or Canada; and
>
> *(2)* The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii) 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 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 beneficiaries include ten nurses and four medical assistants. The director found that the petitioner provided evidence of the beneficiaries' diplomas, but did not establish that they possess full and unrestricted licenses to practice in their home countries. On appeal, counsel notes that the diplomas include the licensing information. The AAO finds that the petitioner has established that all of the beneficiaries possess licenses to practice in their home countries. The director also stated that the evidence fails to establish that the petitioner is authorized to give the type of training described. She referred to counsel's statement in response to the director's request for evidence that the petitioner is not a licensed, approved or accredited institution and that it is not a vocational institution. The director cites 8 C.F.R. § 214.3(b) to indicate that the petitioner is not a "licensed, approved or accredited institution." The AAO notes that the petitioner is not seeking to qualify the trainees as academic or vocational students under the F or M visa categories, and that the cited regulation does not apply to the petitioner in this case.

The applicable regulation requires the petitioner to provide "a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training." The petitioner did not provide any statement regarding the laws of the State of Texas as they relate to the beneficiaries' qualifications for receiving the proposed training or the petitioner's authorization to provide the training. The petitioner has, therefore, not met the terms of 8 C.F.R. § 214.2(h)(7)(i)(B)(2) regarding the ten nurse beneficiaries.[1] These regulations do not apply to the four medical assistant beneficiaries, however.

The director also found that the petitioner did not establish that the training is unavailable in the beneficiaries' home country because all of the beneficiaries have work experience and education in nursing or as medical assistants. The focus of the training is on medical practices and standards in the United States. On appeal, counsel provides two articles relating to healthcare training in the beneficiaries' home country, as well as a letter from one of the petitioner's employees, a United States-based nurse practitioner who has been involved with training the beneficiaries via the Internet. This evidence establishes that medical procedures in

[1] The regulations prohibit training that is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. 8 C.F.R. § 214.2(h)(7)(iii)(F). The AAO notes that the petitioner's website, http://www.entermedic.com/?About_company, does not indicate the company's intention to place the nurses overseas, as required by the regulations. It appears that the petitioner places nurses in positions in the United States.

the United States are significantly different than in the beneficiaries' home country and that the proposed training is not available in the beneficiaries' home country.

The director also found that the petitioner did not establish that any productive labor would be incidental to the training. Counsel states that the petitioner does not regularly employ medical professionals, but instead provides placement services in Eastern Europe for medical professionals. Counsel states that the trainee nurses and medical assistants are eligible to earn a stipend of $20.00 per hour during the supervised clinical segment of the medical specialist curriculum segment of the training program. According to the training schedule submitted with the initial petition, there would be 1144 clinical hours during the medical specialist curriculum segment. There would also be 611 supervised practicum hours during the medical specialist curriculum. It is not clear from the record whether the trainees would be allowed to earn a stipend during the supervised practicum. If the trainees were only earning the stipend during the clinical segment, they would each earn $22,880 during that year. If they were also allowed to earn the stipend during the supervised practicum, their total yearly earnings would be $35,100. The AAO concurs with counsel that on-the-job training is a necessary component of the proposed training. The AAO finds, however, that the majority of the entire second year of training would be compensated at a level commensurate with regular paid employees in the field, and that this violates the prohibition on productive employment. The Department of Labor's *Occupational Outlook Handbook* indicates that the median salary for nurses in physicians' practices is $44,870 annually; the median salary for medical assistants in physicians' offices is $24,260.

Beyond the decision of the director, the AAO finds that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation. For instance, the first 13 weeks of training is described as, "An introduction to U.S. medical standards, procedures including patient care, and diversity and cultural sensitivity to maximize training experience." The schedule then states that this module will include 6 hours of classroom instruction, 12-18 hours of peer-to-peer instruction and 15-20 hours of practicum per week. All trainees, both nurses and medical assistants, would follow the same training schedule. There is no information about the specific topics to be studied, the texts or resources to be used, or how long each topic will be studied. There is also no evidence regarding a means of evaluation. There is not enough information in the training schedule to establish that it has a fixed schedule and means of evaluation and that it does not deal in generalities. For this additional reason, 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. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.