



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

D2



FILE: WAC 06 132 53019 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2006

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)

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, 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a specialty foods distributor that seeks to employ the beneficiary as a management trainee. The director determined that the petitioner did not establish that the training would benefit the beneficiary in pursuing a career outside the United States and that the training may be designed to staff the petitioner's domestic operations. The director also found that the training was on behalf of a beneficiary who already possessed substantial training and expertise in the proposed field of training. On appeal, counsel submits a brief.

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;
  - (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 denial letter; and (3) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the petitioner did not establish that the training will benefit the beneficiary in pursuing a career outside the United States, and that the training may be for the purpose of staffing the petitioner's domestic operations.

On appeal, counsel states that the beneficiary is part of a family business in her home country, and the business is one of the petitioner's international suppliers. There is no evidence in the record regarding the beneficiary's family business or its relationship to the petitioner's business. 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)). In this instance, however, regardless of whether or not the beneficiary is a part of a family business that has a business relationship with the petitioner, the proposed training would provide the beneficiary with both small business management training, and training in the area of specialty food marketing, either of which could be utilized in the beneficiary's home country. In addition, the director concluded that the goal of training the beneficiary might be in order to staff the petitioner's domestic operations. There is no indication in the record that the beneficiary would be staffing the petitioner's operations, either during the training process or after the training is completed. The director's remarks on these issues are withdrawn.

The director also found that the training would be on behalf of a beneficiary who already possesses substantial training and expertise in the field of the proposed training. The beneficiary earned a bachelor's degree in marketing from a United States university in December 2004, approximately 15 months prior to the filing of this petition. The director is relying on the beneficiary's education, as well as the petitioner's statement that the beneficiary has familiarity with the field of the proposed training, due to her family's business. There is no evidence in the record regarding any specific work experience the beneficiary may have. The director's determination is not based on the evidence of record. His comments are withdrawn.

The petition may not be approved at this time, however. The director did not address the issues of whether the training program deals in generalities with no fixed schedule or means of evaluation.

The petitioner submitted a general training schedule, but it did not provide sufficient detail to meet the terms of the regulations. The petitioner stated that the beneficiary will rotate through five departments over the course of the two-year training period, although the training program is broken into four segments, covering four departments. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Each segment covers a 16- to 32-week block of time, with six to ten activities that would be included during these periods. There is no evidence in the record regarding whether there is any classroom instruction, or how long the training lasts each day. The petitioner must provide a training program with significantly more detail in order to meet the terms of the regulations. In addition, the record does not establish a means of evaluating the beneficiary during the training period, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director may afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the training program deals in generalities with no fixed schedule or means of evaluation, as well as any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's April 3, 2006 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.