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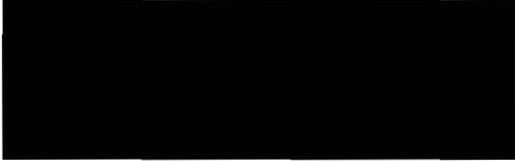
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: WAC 09 013 51281 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [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:

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. On appeal before the Administrative Appeals Office (AAO), the AAO summarily dismissed the appeal, finding that the petitioner failed to specifically identify an error for the appeal. After the AAO's decision was issued, the AAO discovered that counsel for the petitioner had properly filed an appeal brief identifying an error by the director and thereby meeting the regulatory requirements for full consideration of the appeal. Thus, the AAO will sua sponte re-open the decision on a service motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) for the purpose of issuing a new decision favorable to the affected party. The appeal will be sustained, and the petition will be approved.

The petitioner is a dental laboratory that seeks to employ the beneficiary as a trainee for a period of two years. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker trainee 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 additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the following grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; (2) the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad; (3) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (4) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of 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.

The first issue to be addressed is whether the director erred in finding that the petitioner had failed to establish that the proposed training could not be obtained in the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) requires the petitioner to demonstrate that the proposed training is not available in the beneficiary's home country, and 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires a statement from the petitioner indicating the reasons why the proposed training cannot be obtained in the alien's home country and why it is necessary for the alien to be trained in the United States.

The question to be addressed when attempting to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(I) and 214.2(h)(7)(ii)(B)(5) is not whether the petitioner offers this training in the alien's home country. Whether the petitioner itself offers similar training in the beneficiary's home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiary's home country, irrespective of whether it would be provided by the petitioner or another entity.

In the present case, the primary purpose of the training program is to train the beneficiary on the petitioner's particular business practices. As stated in the petitioner's letter of support, dated October 15, 2008, "the program is designed to provide in-depth instruction in the necessary techniques, technical skills and knowledge required for the fabrication of highest quality dental implants and dental prostheses pursuant to patented U.S. procedures, trends and styles." The petitioner also explained that it specializes in the "manufacture and repair of very sophisticated dental prosthetic devices and appliances." In addition, the petitioner manufactures the prostheses using titanium which is a "new technology and requires the use of complex die casting machinery not previously utilized in dental laboratories."

The petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique and not available in Japan. For example, the petitioner submitted a letter from the president of [REDACTED] the employer for whom the

beneficiary will work for upon completion of the training program and an affiliate of the petitioner, that states that the petitioner's training program is not available in Japan and that it is not capable of providing such training to the beneficiary. Moreover, the petitioner also submitted corroborating evidence in the form of a letter from an instructor of Nihon University's Dental Technology Training School in the School of Dentistry. The author has vast experience in dental implants and dental technology in Japan as well as first-hand knowledge of the petitioner's program. The author of the letter verifies that the training provided by the petitioner is not available in Japan. The petitioner submitted sufficient evidence to establish that the proposed training is not available in the beneficiary's home country, and the AAO thereby concludes that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The second issue to be addressed is whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(h)(7)(2)(A)(4), requiring the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

As the purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner. The petitioner stated that it is affiliated with [REDACTED] located in Japan. In addition, the petitioner submitted an agreement with [REDACTED] that stated the petitioner will train individuals in dental implant technology, who upon completion of the training program will return to Japan and be employed by [REDACTED]. This agreement is sufficient evidence to establish that the beneficiary will be employed in Japan by an affiliate of the petitioner and thereby benefit from the proposed training in pursuing a career outside the United States. The AAO therefore withdraws this portion of the decision.

The third issue to be addressed is whether the director erred in finding that the petitioner failed to submit evidence that the training program does not deal with generalities with no fixed schedule, objectives, or means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition where the petitioner submits a training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Upon review of the training program submitted by the petitioner, the petitioner provided sufficient evidence to establish that a training program currently exists, with a set schedule, objectives, and means of evaluation. The evidence presented clearly indicates the different phases of the program and provides the names of the instructors, and the materials that will be utilized throughout the course. The AAO also finds sufficient evidence that the trainee will be tested and evaluated throughout the training program. As such, the AAO also withdraws this portion of the director's decision.

The final issue to be addressed is whether the director erred in finding that the petitioner had failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes

approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

The director noted that the beneficiary completed a J-1 program with the petitioner that appears to be the same training that will be provided in the H-3 program. The petitioner explained that the J-1 program focused on the basics of dental implants, as compared to the H-3 program that will focus on the advanced concepts of dental implants. The petitioner also submitted evidence that sufficiently details the differences between the issues studied in the J-1 program compared to those of the H-3 program. The petitioner thereby sufficiently distinguished the J-1 program from the H-3 program provided by the petitioner. The AAO, therefore, withdraws this portion of the director's decision.

For all of these reasons, the petitioner has overcome the grounds of the director's denial, and the director's decision is hereby withdrawn.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.