

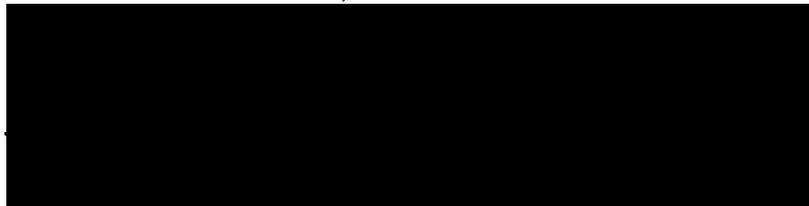
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**U.S. Citizenship
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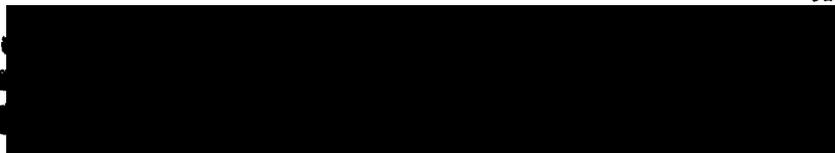
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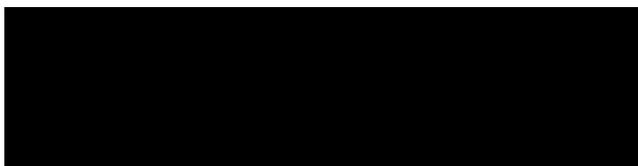
FILE: WAC 03 258 52088 Office: CALIFORNIA SERVICE CENTER Date: **MAR 10 2005**

IN RE: Petitioner:
Beneficiaries:



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, 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 manufacturer and distributor of beauty products that seeks to employ the beneficiaries as production trainees. The director determined that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation and that it involves productive employment beyond that which is incidental to the training. The director also found that there are no regular training facilities or personnel involved in the training and that the petitioner did not establish that the training is unavailable in the beneficiaries' home country.

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) 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;

- (5) Describes the career abroad for which the training will prepare the alien;
 - (6) 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
 - (7) 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 director found that the proposed training deals in generalities with no fixed schedule, objectives or means of evaluation. The training is divided into three segments: two months for "training orientation and general information session," 12 months of seminar/class hours covering three topics; and ten months of "interactive programs." The seminar hours are divided into three four-month segments covering: 1) production and manufacturing systems/principles; 2) facilities design and construction; and 3) administrative principles and

skills. The petitioner then lists 5-7 topics within each segment. There is no additional information about the topics to be studied, the texts or resources to be used, or how long each topic will be studied within the four-month segment. The same problems exist with the ten-month interactive programs. The petitioner states that the beneficiaries will spend five months in production and manufacturing rotations and five months in administrative rotations, but there is little detail as to what they would actually be doing during this time. Finally, the evaluation process is limited. The petitioner states that there will be four "tests and practical exams," however one of them is entirely an assessment of the training itself, and two others have elements of training assessment. One test will be "to determine how much they [the beneficiaries] learned during the Training," and in another the beneficiaries will "try out the training materials in real-life ("field") settings." There is no indication at what point in the training the tests will occur, nor how they will be structured. The petitioner also provided its employee performance evaluation forms to establish that there is a means of evaluation of the beneficiaries. No information is in the record regarding how or when these evaluations would occur or who would perform them. The AAO agrees with the director that, because there is so little detail regarding the critical elements of the training program, that it deals in generalities with no fixed schedule, objectives or means of evaluation.

The director also found that the petitioner did not provide any evidence to establish that the beneficiaries will not be engaged in productive employment beyond that which is incidental to the training. The interactive programs do not appear to involve productive employment; however, as noted above, there is so little detail regarding how the beneficiaries will actually spend their time during this ten-month period that it is not possible to determine whether this time will be spent in productive employment.

The director stated that there are no regular training facilities or personnel involved in the training. There is conflicting information in the record regarding the petitioner's employees. On the Form I-129 filed on September 15, 2003, it is reported in Part 5 that the petitioner has four employees. On the quarterly wage report filed with the State of California and dated March 25, 2003, the petitioner reports having two employees. Similarly, the organizational chart submitted in April 2004 in response to the director's request for evidence indicates that there are two employees, although there are slots for 13 employees plus one more for the trainees. The AAO notes that another organizational chart submitted at the same time, but without the names of the two employees, indicates that there are 11 positions within the company, with no notation of trainees. The training program provides no indication of who will be providing the training for the first two-month segment.

The second segment of class hours will be "supervised" by [REDACTED] the petitioner's president and general manager. For the final ten months, there is nothing in the record to establish who would be providing the training. In response to the director's first request for evidence, counsel stated that there would be a full time trainer [REDACTED] Professional Body and Hair Care Systems, followed by five part-time trainers who work for other companies. The petitioner has not stated who would be responsible for training in which segments, and while it indicates that [REDACTED] would be a full-time trainer, the petitioner has not explained how she would be responsible for topics such as civil and environmental engineering, plant construction, or topics specific to the petitioner's business.

On appeal, counsel states that the training facilities and personnel are not provided by the petitioner, but rather by independent companies, one of which has its own classroom and training facilities. In response to the director's second request for evidence, however, counsel provides a floor plan and photographs of the petitioner's training facilities. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has not established that it has adequate personnel to provide the training, nor has it provided evidence establishing that the independent companies it referenced are capable of providing the proposed training.

Finally, the director found that the petitioner did not establish that the training is unavailable in the beneficiaries' home country. The proposed training does not appear to be specific to the petitioner, but is instead focused on the overall manufacturing process. The petitioner has not established that there are no advanced manufacturing facilities in the beneficiaries' home country.

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.