

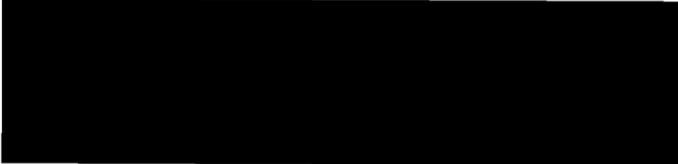
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U.S. Citizenship
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FILE: EAC 06 005 53405 Office: VERMONT SERVICE CENTER Date: APR 14 2006

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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer and wholesaler of women's accessories and novelties that seeks to employ the beneficiary as a fashion designer. The director determined that the training deals in generalities with no fixed schedule, objectives or means of evaluation. The director found that the beneficiary would be placed in a position that is within the normal operation of the petitioner's business. The director further found that the beneficiary would be engaged in productive employment. The director stated that the petitioner did not establish that the training would assist the beneficiary in pursuing a career outside the United States.

On appeal, the petitioner submits a letter.

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;

- (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 director found that the training program deals in generalities with no fixed schedules, objectives, or means of evaluation. In her request for evidence, the director requested that the petitioner, "[P]rovide detailed information regarding the on-the-job training, to include the method of evaluation of the beneficiary's performances of duties and responsibilities. . . . Submit an outline of each phase of the proposed training program, especially those involving the rotational assignments." In reply, counsel refers to the "outline of the

training program,” and the petitioner stated that it attached “a description of our on-the-job training program and classroom instructions.” This evidence is not in the record, however. The only description of the training program is the five-page document submitted with the original petition. On appeal, the petitioner states that it responded to the director’s request and provided a syllabus for the training program. As previously noted, there are other documents replying to various aspects of the director’s request for evidence, but no further information regarding the structure of the training program. Neither counsel nor the petitioner submitted (or resubmitted) the information on appeal. The AAO is therefore only able to rely on the documentation provided with the initial petition. There is no clear schedule of how the beneficiary will spend her training time, nor is there any indication of a means of evaluation. The AAO concurs with the director that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation. In addition, the AAO notes that the “Product Development” segment is scheduled for “approximately 40 weeks,” but in reviewing the breakdown of the component segments, they are scheduled to total more than 40 weeks. This further supports the director’s determination that the proposed training has no fixed schedule.

The director found that because the training is primarily on-the-job training, the beneficiary would be placed in a position that is within the normal operation of the petitioner’s business. The director also found that the beneficiary would be engaged in productive employment. On appeal, the petitioner states that the beneficiary would not be involved in any productive employment during the proposed training. There is no indication in the record that the beneficiary would be engaged in productive employment or would be placed in the normal operation of the petitioner’s business. The AAO withdraws this portion of the director’s decision.

The director stated that the petitioner did not establish that the training would assist the beneficiary in pursuing a career outside the United States. The AAO does not concur. The petitioner submitted evidence to establish that it has overseas operations where it intends to place the beneficiary. As a result, the AAO finds that the petitioner established that the proposed training would assist the beneficiary in pursuing a career outside the United States.

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.