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FILE: WAC 06 079 52835 Office: CALIFORNIA SERVICE CENTER Date: JUL 18 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:

SELF-REPRESENTED

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 spinal cord injury recovery center that seeks to employ the beneficiary as a spinal cord injury specialist apprentice. The director determined that the training is of a type that would primarily be provided by an academic or vocational institution, and therefore, the petitioner would not be eligible for an H-3 visa classification for the position. The director also found that the training is designed to extend the total allowable period of practical training previously authorized to a nonimmigrant student.

The petitioner submitted a timely Form I-290B on April 3, 2006 and indicated that it would be submitting a separate brief or evidence within 45 days. On June 12, 2006, the AAO sent the petitioner a fax requesting a copy of the brief or evidence that had been submitted. The petitioner did not reply; therefore, the record is complete.

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 notice of intent to deny the petition; (3) the petitioner's response to the director's notice; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The director determined that the training is of a type that would primarily be provided by an academic or vocational institution, and therefore, would not be eligible for an H-3 visa classification. The AAO disagrees. The petitioner is a spinal cord treatment center that implements a trademarked method of exercise-based

therapy for individuals with spinal cord injuries. The petitioner stated that the training is unavailable anywhere else in the world. As such, it is not training that would be available through vocational or academic institutions. The petitioner has overcome this ground for the director's denial.

The director stated that the training was designed to extend the total allowable period of practical training previously authorized to a nonimmigrant student. The petitioner does not address this basis for denial in its statement on appeal. The beneficiary has an associate's degree in health and physical education/fitness. Following graduation, he was approved for one year of optional practical training related to his degree. The beneficiary participated in a one-week training program with the petitioner, designed to train its clients' personal trainers how to safely and effectively work through an individualized home workout program. The beneficiary then worked as a personal trainer for a child with a spinal cord injury for one year. In response to the director's notice of intent to deny the petition, the petitioner's director of education stated that anyone who chooses to work in the field of spinal cord recovery based on exercise would be required to complete professional certification with the petitioner. It appears, however, that following a one-week training period, and one year of working with exercise with an individual with a spinal cord injury, that the proposed training has the effect of simply extending the previous training already received.

Beyond the decision of the director, the AAO notes that there is no evidence in the record regarding the elements of the proposed training and nothing to establish that it does not deal in generalities with no fixed schedule or means of evaluation. The record does not contain any evidence regarding the details of the training program, its structure, timeframe or means of evaluation. 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.