

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

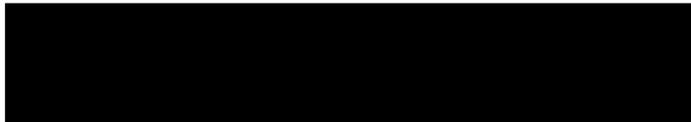
PUBLIC COPY



D4

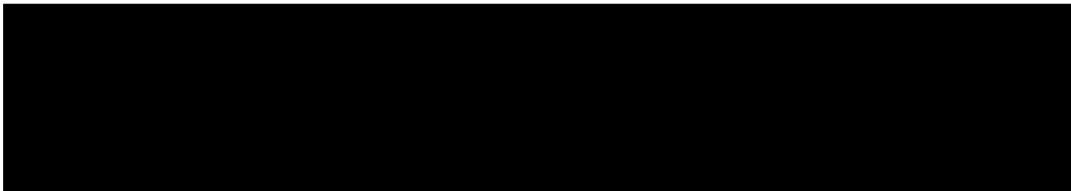
FILE: EAC 06 077 52178 Office: VERMONT SERVICE CENTER Date: **JAN 31 2007**

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is a restaurant and pub that seeks to employ the beneficiary as a hospitality management 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; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the 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 basis of her determination that the petitioner had failed to demonstrate that the proposed training program would benefit the beneficiary in pursuing a career outside the United States; that the beneficiary would be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed; that the petitioner had not submitted a statement which described the type of training and supervision to be given and the structure of the proposed training program; that the proposed training program deals in generalities with no fixed schedule, objectives, or means of evaluation; that the proposed training program is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; and that the proposed training program would result in productive employment beyond that which is incidental and necessary to the 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.

According to the program syllabus submitted with the petitioner's January 11, 2006 letter of support, the proposed training program would last two years. The syllabus's introduction states the following:

The aim of this training program is to give the Trainee an overview of the procedures involved in American-style restaurant management and [the petitioner's] unique restaurant concept, including marketing, cost analysis, service[,] and promotion, to provide the Trainee with a better understanding of the U.S. slant in the industry and enable the Trainee to handle a multitude of duties upon the Trainee's return to Ireland in 2008.

We have designed a training plan that will build upon the Trainee's experience and provide exposure to American-style restaurant management and [the petitioner's] own unique restaurant concept. It is our intention to instruct the Trainee in all areas of our restaurant business, to enable him to assume a managerial position in the restaurant industry upon his return to Ireland in 2008.

According to the petitioner, its proposed training program would consist of five components: (1) a one-month orientation; (2) a one-month overview of the petitioner's Irish cuisine preparation and presentation; (3) a nine-month rotation into the different areas of food production; (4) a nine-month rotation into the different areas of restaurant management; and (5) a four-month integrated application of the training program. The petitioner provided detailed information regarding the means of evaluation, the objectives of the proposed training program, the proposed duties, and the supervision that would be provided.

The director denied the petition, finding that the petitioner had failed to demonstrate that it has a well-established training program, what benefit would accrue to the petitioner for hosting the program, what the beneficiary would be doing on a day-to-day basis, or that the beneficiary would not be involved in productive employment.

On appeal, counsel contends that the director erred in denying the petition.

The director found that the petitioner had failed to demonstrate that it has a well-established training program. He found further that the petitioner had failed to describe what the beneficiary would be doing on a day-to-day basis. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to submit a statement which describes the type of training and supervision to be given, and the structure of the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(2) requires a statement setting forth the proportion of time that will be devoted to productive employment. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires a statement showing the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

Counsel contends that all of these criteria have been met, and that it is unreasonable for the director to expect a day-to-day breakdown of the beneficiary's activities in a 730-day program. The AAO agrees,

and finds that the information submitted by the petitioner satisfies the criteria at 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(1), (2), and (3) in that it describes the type of training and supervision to be given, and the structure of the training program, sets forth the proportion of time that will be devoted to productive employment, and shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

The director found that the petitioner had failed to demonstrate what benefit would accrue to the petitioner for hosting the proposed training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires a statement setting forth the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

The Form I-129 listed the beneficiary's salary as \$36,000. The petitioner's letter of support provided three reasons why it desires to offer this training program: (1) providing such a training program to promising young European hospitality managers enables the petitioner to strengthen professional relationships with the European restaurants in which such trainees are eventually placed; (2) providing such a training program enhances the professional development of its U.S. staff; and (3) providing such a training program results in invaluable word-of-mouth advertising. The AAO finds this explanation reasonable, and finds the petitioner to have overcome the director's concern regarding this issue.

Finally, the director found that the petitioner had failed to demonstrate that the beneficiary would not be involved in productive employment. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training, and 8 C.F.R. §§ 214.2(h)(7)(iii)(E) and (F) preclude approval of a program which would result in productive employment beyond that which is incidental and necessary to the training or is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States.

The petitioner's syllabus provides a detailed explanation of the beneficiary's proposed duties, and the petitioner has made clear that every single duty assigned to the beneficiary would also be assigned to another member of the petitioner's management personnel. According to the petitioner's February 3, 2006 response to the director's request for additional evidence:

As indicated in our initial filing, no proportion of [the beneficiary's] time will be devoted to the goal of providing productive employment and no component of [his] training will involve productive employment instead of mentored training assignments. While about half of [his] training is hands-on, all productive employment is incidental to the training objectives and training methods.

We are offering [the beneficiary] a training position that will be supervised and mentored on a day-to-day basis by our professional management staff. This is not a regular employment position, and will not displace any U.S. workers.

We will not assign any duty to [the beneficiary] that we will not also assign to another regular member of our restaurant management personnel.

As such, the AAO finds that the petitioner has overcome the director's concerns regarding this issue.

The petitioner is a well-known restaurant with 48 employees. It has provided detailed information regarding the means of evaluation, the objectives of the proposed training program, the proposed duties, and the supervision that would be provided. It has also described the benefit it would receive for hosting the proposed training program and established that the beneficiary would not engage in productive employment beyond that which is incidental and necessary to the training. While the training is primarily on-the-job, rather than classroom-based, the petitioner has established that this type of training is both appropriate and expected within its industry. The objectives of the proposed training are clear, and the petitioner stated the means of evaluation.

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.