

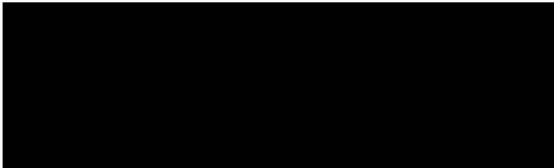


U.S. Citizenship
and Immigration
Services

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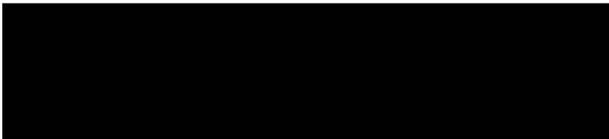


FILE: WAC 08 098 51344 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in print advertising, and it seeks to employ the beneficiary as a trainee for a period of eighteen months. 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 denial letter; and (3) 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 two grounds: (1) that the petitioner failed to establish that it possesses the physical plant space and sufficiently trained manpower to provide the training; and, (2) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country. The director also noted several inconsistencies in the documentation provided by the petitioner.

The petitioner submitted the Form I-290B on March 28, 2008. On appeal, the petitioner explained that the information submitted with the Form I-129 was not provided by the petitioner. The petitioner states that a staffing company contacted him to place the beneficiary with his company, and the staffing company informed the petitioner that their office and attorney would do all the work to obtain the H-3 classification. The petitioner signed the completed Form I-129 but did not submit any further documentation.

On appeal, the petitioner states the following:

It was only after I received and read the Notice of Action which stated the application had been denied and basis of their denial, that I was made aware of what the Agency and Attorney had put into the application. Please note that the agency or their attorney never requested me to complete a training program, never requested to provide photographs of my shop, and never requested to provide them with a floor plan. The information which was submitted with the application was not provided by me. It appears from reading the Notice that none of the documentation submitted was mine. I have no idea what was provided or where they obtained that information.

The information which the Agency provided in the manual and letter are completely false.

On appeal, the petitioner submits a new training program prepared by the petitioner, and photographs of the petitioner's office.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In this case, the petitioner has not identified any erroneous conclusion of law or statement of fact made by the director. Instead, the petitioner explains that the previous attorney fraudulently filed a Form I-129 on behalf of the petitioner. On appeal, the petitioner submits new documentation that correctly reflects the petitioner and the proposed training program. The petitioner wishes to continue with the petition for H-3 classification on behalf of the beneficiary. However, the petitioner cannot amend its petition on appeal and thus, the new documentation will not be accepted.

Counsel's request to amend the petition on appeal is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(h)(i)(E) state:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

The request to reconsider the original petition on appeal with completely new documentation of the petitioner and the training program is, therefore, rejected.

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 summarily dismissed. The petition is denied.