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U.S. Citizenship
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Services

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FILE: EAC 04 264 50766 Office: VERMONT SERVICE CENTER

Date: JAN 19 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 medical technology manufacturer that seeks to employ the beneficiary as a trainee in fiber post production technology. The director determined that the petitioner did not establish that the proposed training complied with the regulatory criteria for H-3 visa classification.

On appeal, the petitioner submits a letter and supporting documentation.

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 denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, the petitioner states that family members developed its technology and that no other company uses the same technology. The petitioner further states that it plans to move part of its production capacity to the beneficiary's home country and employ him there. The petitioner also provides an outline of the training program.

The director determined that the petitioner did not establish that it had materials, evaluations, testing materials and sufficiently trained manpower to provide the proposed training. The director combined several elements of the regulation in making this determination. The AAO finds that there is no evidence that the training program deals with a fixed schedule, objectives, or means of evaluation. On appeal, the petitioner provides a

four-part training program, with each segment ranging from one month to six months, and each segment described in narrative form. The schedule gives little information regarding what the beneficiary would actually be doing for each segment or how he would be training. It does not provide any specifics to establish that the program does not deal in generalities, nor is there is any evidence regarding who would provide the training, or how the beneficiary would be evaluated.

The director stated, "It appears that utilization of personnel, materials, foreign educational/training programs, and the Internet, etc., can be utilized to accomplish the goals of the training program." The regulation states that the petitioner is required to show that the proposed training is not available in the beneficiary's home country. It is irrelevant if the training could be obtained through other resources, unless those resources are in the beneficiary's own country. The petitioner stated in its letter of support, "We were first in the world company [sic] producing dental fiber posts and now with our advanced technology we are one of major [sic] world producer of fiber posts." On appeal, the petitioner states, "The technology we utilize is not performed anywhere outside our facility." The petitioner does not, however, provide any corroborating evidence, references or significant details establishing that the technology it employs is not available in the beneficiary's home country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not established that the proposed training is unavailable in the beneficiary's 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.