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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D5

DATE: APR 07 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: WAC 10 800 10253

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 engaged in machinery sales, service and marketing and it seeks to employ the beneficiary as a trainee for a period of ten 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 director denied the petition because the petitioner did not submit the required initial evidence and supporting documentation with the Form I-129. On appeal, the petitioner stated that the supporting documents were mailed to the Vermont Service Center because the petitioner did not realize that the petition was being processed at the USCIS Office in Laguna Niguel, California. On appeal, the petitioner submits supporting documentation for the petition.

The petitioner filed Form I-129 on September 13, 2010. The United States Citizenship and Immigration Services' (USCIS) instruction on filing Form I-129 states that the petitioner must completely fill out the form and submit initial evidence to establish eligibility for the requested nonimmigrant benefit. The petitioner did not establish a basis for eligibility, and the petition was properly denied.

In this instance, aside from the statement made on the Form I-129, the petitioner did not submit any evidence to support its petition. On appeal, the petitioner submits documentation in support of the H-3 petition but it is not sufficient evidence to establish that its proposed training program meets the regulatory requirements to establish eligibility for the nonimmigrant visa. On appeal, the petitioner submits a three page document to establish that the training program meets the regulatory requirements. However, the petitioner described the training program in six sentences. The petitioner also stated that the training will consist of "full time on-the-job training" but does not explain in any detail what the trainee will do for 10 months of on-the-job training. In addition, the petitioner states that the training is not available in Germany because one of the main factors of the training is the "international experience to be gained," and the trainee will learn about "American culture and American business customs." However, the petitioner did not present any explanation of why experience in American business customs cannot be obtained in Germany in for example, an American company located in Germany. Moreover, the petitioner did not explain how the "American business customs" differ from business customs in Germany. 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)).

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of*

Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.