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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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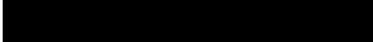


U.S. Citizenship
and Immigration
Services



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FILE:  Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2011**

IN RE: Petitioner: 
Beneficiaries: 

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:

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.

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 sustained. The petition will be approved.

The petitioner is a dental laboratory that seeks to employ the beneficiary as a 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 (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) 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 the following grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; (2) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and, (3) the petitioner failed to demonstrate that it has sufficiently trained manpower to provide the training specified.

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.

The first issue to be addressed is whether the director erred in finding that the petitioner had failed to establish that the proposed training could not be obtained in the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to demonstrate that the proposed training is not available in the beneficiary's home country, and 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires a statement from the petitioner indicating the reasons why the proposed training cannot be obtained in the alien's home country and why it is necessary for the alien to be trained in the United States.

As stated in the petitioner's letter of support, dated October 5, 2009, "the program is designed to provide in-depth instruction in the necessary techniques, technical skills and knowledge required for the fabrication of highest quality dental implants and dental prostheses pursuant to patented U.S. procedures, trends and styles." The petitioner also explained that it specializes in the "manufacture and repair of very sophisticated dental prosthetic devices and appliances." In addition, the petitioner manufactures the prostheses using titanium which is a "new technology and requires the use of complex die casting machinery not previously utilized in dental laboratories."

The petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique and not available in Japan. For example, the petitioner submitted a letter from [REDACTED] who established the [REDACTED]. The author states that "the availability of trained dental technologist with knowledge of advanced implant technology in Japan is very scarce." The author also stated that it visited the petitioner's office and was "impressed by the quality of the instruction and the standards of implant technology training," and further stated that "there is nothing like this instruction currently in Japan."

Moreover, the petitioner also submitted corroborating evidence in the form of a letter from an instructor [REDACTED]. The author stated that "the general public's awareness for implantology has been expanding," and thus, "it is essential for the dental offices as well as dental labs to stay current with the latest implantology." The author of the letter verifies that the training provided by the petitioner is not available in Japan.

Furthermore, as indicated in the training program outline, the beneficiary will receive training on [REDACTED] a dental system that was patented by the Petitioner. Thus, the beneficiary will receive training on a system unique to the petitioner and not available in Japan. The petitioner submitted sufficient evidence to establish that the proposed training is not available in the

beneficiary's home country, and the AAO thereby concludes that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The second issue to be addressed is whether the director erred in finding that the petitioner failed to submit evidence that the training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition where the petitioner submits a training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Upon review of the training program submitted by the petitioner, the petitioner provided sufficient evidence to establish that a training program currently exists, with a set schedule, objectives and means of evaluation. The evidence presented clearly indicates the different phases of the program and provides the names of the instructors and the materials that will be utilized throughout the course. The AAO also finds sufficient evidence that the trainee will be tested and evaluated throughout the training program. As such, the AAO withdraws this portion of the director's decision.

The final issue to be addressed is whether the petitioner has established that it has the physical plant and sufficiently trained manpower to provide the training specified. The director noted in her decision that the photographs submitted by the petitioner show a conference room but does not show laboratory space where the beneficiary can receive on-the-job training.

The petitioner submitted photographs of a conference room. In addition, the petitioner submitted a floor plan of its dental studio. According to the floor plan, the office has a model room, packing room, metal room, porcelain room, burn out/cast room, an exam room, an extra room and an office. In addition, the petitioner submitted the petitioner's commercial lease of the office that states the agreed use as "dental prosthesis manufacture." The AAO finds sufficient evidence that the petitioner has the requisite physical plant for the training specified. Thus, the AAO also withdraws this portion of the director's decision.

For all of these reasons, the petitioner has overcome the grounds of the director's denial, and the director's decision is hereby withdrawn.

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 met that burden.

ORDER: The appeal is sustained.