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FILE: WAC 07 177 54963 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2007

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.

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 dismissed. The petition will be denied.

The petitioner is a pharmacy with five employees that seeks to employ the beneficiary as a trainee in merchandise and logistics management 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 request for additional evidence; (3) the petitioner's response to the director's request; (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 three grounds: (1) that the petitioner had failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; (2) that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country; and (3) that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified.

On appeal, the petitioner 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.

In its May 18, 2007 letter of support, the petitioner described its business as follows:

We are a full-service pharmacy that specializes in your health, offering fast, courteous service in a modern and inviting atmosphere. The company fills or manages more than hundreds of prescriptions per year. We drive value for pharmacy services customers by effectively managing pharmaceutical costs and improving healthcare outcomes through our customers, its pharmacy benefit management, mail order and specialty pharmacy division; (and) its retail-based clinic subsidiary. Petitioning organization utilizes the latest technologies to help ensure your prescriptions are filled accurately and efficiently.

* * *

[The petitioner] is a community pharmacy that has a niche market. It is our aim to compete [with] pharmacy chains such as CVS, Rite Aid[,] and Walgreen's. We are intensifying our marketing efforts and thinking of ways to expand our reach.

[The petitioner] is in the groundwork of forming branches not only in Southern California, we are working on establishing businesses, and affiliates in Asia.

The petitioner described the aim of the proposed training program as follows:

This training was specifically designed to provide [the] trainee with extensive direct exposure to the Pharmacy Industry with focus on Merchandise and Logistics Management.

The main goal of the program is to educate trainee in all areas of [the petitioner] and its branches. By the end of the 18-month period the trainee would have gained knowledge on Pharmacy Merchandising and Logistics management. Areas that this training will focus on are: Procurement mechanisms, ordering, receiving and stock management of drugs, dispensing, storage[,] and security. We would also delve into purchasing and procurement, inventory management, warehousing, shipping[,] and customer returns.

* * *

It is the goal of this training for participants to have a clear understanding of the important role of logistics in pharmacy operations. This valuable exposure will be useful to them when they perform their roles as Pharmacy Merchandise and Logistics Coordinator in our branches abroad.

This is an excellent Pharmacy merchandise and logistics skills building course for the new entrant to restaurant operations [sic].

According to the petitioner, the beneficiary would spend fifty percent of her time in classroom instruction, forty percent of her time in practical training, and ten percent of her time being exposed to the petitioner's daily operations. The beneficiary would participate in the training program forty hours per week. The petitioner emphasized that the beneficiary would "under no circumstances" engage in productive employment.

The proposed training program would consist of four modules. The first module, entitled "General Orientation," would last two months. The second module, entitled "Merchandise Strategies," would last eight months. The third module, entitled "Logistics (Supply Chain Management)," would last seven months. The fourth module, entitled "Evaluation," would last one month.

Upon review, the AAO agrees with the director that the proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director found that the beneficiary already possesses substantial training and expertise in the proposed field of training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

In her August 9, 2007 denial, the director referenced the beneficiary's current position at the Hamad Medical Corporation (HMC), in Qatar. The record indicates that she is currently working for HMC as a medical merchandising assistant, where she performs such tasks as inventory control; stocking and restocking; preparing and developing budget proposals; and disposing of expired stock. The beneficiary's resume titles her position as that of a medical secretary, and that she performs such tasks as compiling medical charts and reports; answering and screening telephone calls; preparing and filing medical reports; etc. The director also referenced the beneficiary's degree in medical technology, which she received in 1986.

The AAO agrees with the petitioner that the beneficiary's previous experience and education are not in the same field as the proposed training program. Education in, and employment in, medical technology and the management of merchandising and logistics for a retail pharmacy are entirely different fields of endeavor.

The AAO finds that the petitioner has established that the beneficiary does not already possess substantial training and expertise in the proposed field of training, and finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(C). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The director also found that the petitioner had failed to establish that the proposed training could not be obtained in the Philippines, the beneficiary's home country. The AAO agrees. 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 alien's own 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.

The list provided by the petitioner in response to the director's request for additional evidence is not exhaustive. The AAO has conducted a simple online search, and has found that the Technological Institute of the Philippines offers a bachelor's degree in commerce with a major in logistics management;¹ the University of the Philippines—Baguio "regularly conducts" seminars in logistics management;² and

¹ See <http://www.tip.edu.ph/content/partner2.htm> (accessed November 19, 2007).

² See <http://www.upb.edu.ph/index.php?option=content&task=view&id=17&Itemid=51> (accessed November 19, 2007).

the Philippine Trade Training Center offered a two-day seminar on logistics management in November 2007.³ That such programs exist is not consistent with a finding that the proposed training cannot be obtained in the Philippines. Further, the AAO questions how pharmacies currently operating in the Philippines are able to function if training on medicine contracting, bulk ordering, supply management, etc. cannot be obtained in that country.

The petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

Finally, the director found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition that does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified.

In his July 25, 2007 response to the director's request for additional evidence, counsel stated that the proposed training would be handled by its pharmacist, Mr. [REDACTED] the petitioner's "full time trainer." In her denial, the director questioned how Mr. [REDACTED] would have time to train the beneficiary.

On appeal, the petitioner offers the following explanation:

[The petitioner] relies on the fact that the Beneficiary must be trained and sufficiently be [sic] equipped to take on the position of Pharmacy Merchandise and Logistic Coordinator/Specialist, that it rather assign the day to day operation to the four other remaining staff members for it is deemed that the training is necessary.

The petitioner's response does not address the concerns of the director. The petitioner's organizational chart indicates that Mr. [REDACTED] is the petitioner's sole pharmacist. As noted previously, the beneficiary will spend fifty percent of her time in classroom instruction and forty percent of her time in practical training, and that "under no circumstances" would she engage in productive employment. This means that Mr. [REDACTED] would spend twenty hours per week providing classroom instruction to the beneficiary and sixteen hours per week supervising the beneficiary in practical training. Given that the petitioner is a pharmacy, it is unclear to the AAO how it can function without a pharmacist for this amount of time. If he is with the beneficiary thirty-six hours per week, he would only be able to spend four hours per week performing his duties as a pharmacist.

The petitioner has failed to establish that it has sufficiently trained manpower to provide the training specified. Approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(G).

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition. 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.

³ See http://www.pttc.gov.ph/event_details.php?Event=245 (accessed November 19, 2007).