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U.S. Citizenship  
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Services

D4



NOV 24 2004

FILE: SRC 02 117 53517 Office: TEXAS SERVICE CENTER Date:

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, 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 fast food company that owns and manages four locations of a franchise chain and seeks to employ the beneficiary as a management trainee. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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 establish that the training is unavailable in the beneficiary's home country, and because the beneficiary already possesses substantial training and expertise in the proposed field of training. On appeal, counsel submits a statement.

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;

- (5) Describes the career abroad for which the training will prepare the alien;
  - (6) 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
  - (7) 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 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's responses to the director's requests; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the petitioner did not establish that the proposed training is unavailable in the beneficiary's home country. The director requested that the petitioner provide additional evidence to

establish the unavailability of training in the beneficiary's country. In response, the petitioner stated in an affidavit:

The proposed training is not available in the alien's own country. The high standards of the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) are available no other place in the world. These important OSHA standards permeate through our training and play a key role in our restaurants, regardless of worldwide location. As such, it is imperative our Trainees receive the latest and most up-to-date information regarding both the safety and health of our employees and also the restaurant's clientele. The only place in the world these standards exist and therefore the only place they are taught correctly, is in the United States.

The petitioner made a statement that the training is unavailable in the beneficiary's country, but provided no documentary evidence to support his statement. In addition, the AAO notes that there is no section of the training that clearly relates to OSHA standards. On appeal, the petitioner states that the training to be provided in the United States is proprietary and has not been licensed anywhere in Asia except the Philippines. Again, there is no evidence in the record to support this contention. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director also stated that the beneficiary already possessed substantial training and experience in the field of proposed training. There is no evidence in the record regarding the beneficiary's background or experience; therefore, it is unclear how the director came to this conclusion. The director's remarks on this issue are withdrawn.

Beyond the decision of the director, in addition to requiring that the training must be unavailable in the beneficiary's home country, the regulations also require that the training will benefit the beneficiary in pursuing a career outside the United States and may not be in a field in which it is unlikely that the knowledge or skill will be used outside the United States. The petitioner provided no evidence of either an employment agreement between the parties or that it had operations in the beneficiary's home country. Counsel indicated that the petitioner was trying to obtain the franchise in China. On the Form I-129, the petitioner stated that the beneficiary would be capable of managing a franchise or similar restaurant in Hong Kong and that the parent company was "considering operation in Hong Kong." The petitioner did not establish that the beneficiary would use the skills that she would gain through the proposed training outside the United States. If she were only receiving the training in order to work in any franchised fast food restaurant in Hong Kong, then surely that training could be received there. In the alternative, since the petitioner's restaurant does not exist in the beneficiary's home country and the company is only "considering" opening there, the petitioner has not established that the training specific to the petitioner's operations would be used in pursuing a career in her 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.

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