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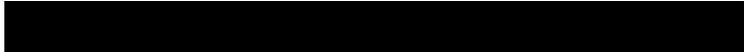
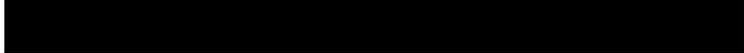
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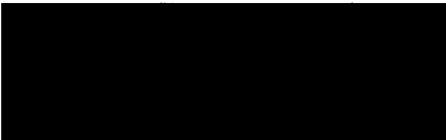
D4

FILE: WAC 03 190 54194 Office: CALIFORNIA SERVICE CENTER Date: **AUG 22 2005**

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:



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 manufacturer and distributor of beauty products that seeks to employ the beneficiaries as production trainees. The director determined that the petitioner did not establish that the training was unavailable in the beneficiaries' home country. The director also found that the training program does not have a fixed schedule, objectives or means of evaluation and that the beneficiaries would be engaged in productive employment. Finally, the director stated that the petitioner does not have adequate facilities or personnel to provide the training.

On appeal, counsel submits a brief.

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 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.

On appeal, counsel states that the proposed training program that was previously submitted complies with all of the terms of the regulations. Counsel asserts that the training has a fixed schedule, objectives and means of evaluation. Counsel also states that the beneficiaries will be trainees and will not be engaged in productive employment. Counsel asserts that the training facilities and personnel are not to be provided directly by the petitioner, but by independent companies.

Counsel states on appeal that the director erred in determining that the proposed training program did not have a fixed schedule, objectives and means of evaluation. Counsel asserts that the training program's objectives and fixed schedule were made clear by the three phases of the proposed training. The classroom schedule provided with the petition is very general, broken into two to five month periods with three to seven topics for each period, plus ten months of rotations in production, manufacturing and administrative sectors. None of the topics in the training schedule includes any additional information beyond a title. For instance, the topics covered over a period of "approximately four (4) months" include: "i. Raw material Preparation, Preservation, Measurement and Handling Controls; ii. Ingredient and Chemical Conditioning; iii. Product Container Forming; Automatic Inspection Procedures/Systems; iv. Automatic Inspection Procedures/Systems; v. Product Handling; vi. Packaging; and vii. Information Systems." This gives no information regarding what the beneficiaries would actually be doing for this four-month period or how they would be training. It does not provide any specifics to establish that the program does not deal in generalities.

The director found that the petitioner did not establish that the beneficiaries would not be engaged in productive employment. The AAO concurs. The ten months of "interactive programs" include working in the production, manufacturing, and administrative components of the company. It is not clear from the description provided that the beneficiaries would only be engaged in training during this segment of the program. 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 director determined that the petitioner did not establish that the proposed training is unavailable in the beneficiaries' home country. The petitioner has two employees, according to the tax documents submitted in response to the director's request. One of them is not listed on the parent company's roster of employees. It appears that manufacturing of the petitioner's products takes place in the Philippines. While much of the training appears to be based on the petitioner's relationships with outside organizations, the petitioner did not establish that this training could not be acquired in the beneficiaries' home country.

Finally, the director found that the petitioner did not establish that it has adequate facilities and personnel to provide the proposed training. As noted above, the petitioner appears to have only two employees. In response to the director's request for evidence, the petitioner provided a list of "potential and interested joint venture partners or investors of [the petitioner that] have welcomed the prospect of having the beneficiaries learn the basics of running a full service salon and spa, production, marketing and distribution facilities." The petitioner then lists six businesses with contact names. On appeal, counsel states, "[T]he training facilities, as well as the training personnel, are not to be provided by the Petitioner-Appellant but the independent Companies that will conduct the training . . . This trainer [sic] has its own classroom and training facilities where the prospective alien-trainees will go and attend its session." In the proposed training schedule, it states that the seminar/class hours occurring over 12 months would be supervised by one of the petitioner's employees. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.