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U.S. Citizenship  
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DH

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER  
[Redacted]

Date: MAY 17 2005

IN RE:

Petitioner:

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:

[Redacted]

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*

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 an accounting firm that seeks to employ the beneficiary as an international financial trainee. The director found that the petitioner had not established that the beneficiary would not be placed in a position in the normal operation of business and that she would be engaged in productive employment. The director also found that the petitioner did not establish that the training is unavailable in the beneficiary's home country or that it had the staff and physical plant to provide the training. Finally, the director stated that the training program had no fixed schedule, objectives or means of evaluation.

On appeal, counsel submits a brief stating that extensive and focused U.S. tax preparation is only available in the United States, and that the training involves a team effort with the petitioner's U.S.-based accountants and management. Counsel submits documentation regarding the specialty and qualifications of the trainers. Counsel asserts that the training is primarily classroom instruction, with no on-the-job training, and that the beneficiary will not be engaged in productive employment. Counsel also provided information as to why the petitioner is willing to provide training without an element of productive employment. Counsel asserts that the training will benefit the beneficiary in pursuing a career outside the United States.

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.

The director found that the beneficiary would be engaged in productive employment. The director noted that the beneficiary's duties do not appear to be substantially different from those of the company's regular employees and that the beneficiary would be paid \$14,400 per year, indicating that she may be earning a regular wage. There is conflicting information in the record on this matter. On the Form I-129, the petitioner stated that the beneficiary would earn \$14,400 per year, working/training for 20 hours per week. Based on a 40 hour work week, this salary would result in an annual earning of \$28,800, clearly an amount within the range of a regular salary. In the training schedule, however, it states that the training is based on an 8-hour day. In addition, the training schedule indicates that the first fourteen months of the training would cover Check and Send (the petitioner's money transfer business) training. The next five months would cover tax preparation training. The last five months would be computer training at a local college, which, the AAO notes would not be allowed under the terms of the proposed visa classification. On appeal, however, the schedule changes significantly so that the first month is on Check and Send issues. The next 23 months cover tax issues, with nothing in the schedule on computer training. In addition, the revised schedule includes a total of eight months (one in 2005 and seven in 2006) of individual income tax preparation. On appeal, counsel states that the training program will consist "primarily of classroom instruction. The position is 'full-time' classroom instruction and/or 'test case' instruction with 0 hours on the job." Counsel does not explain how there are "0 hours on the job," at the same time as the training schedule submitted on appeal states that from 3/16/05 to 4/16/05 the beneficiary would be a "tax season professional practitioner," and from 2/15/06 to 9/27/06, following six months of "extensive individual income tax preparation training" the training would be "preparation of individual tax returns." In addition, the petitioner, in its September 27, 2004 letter of support, states that the training program is "based on an eight-hour day, with four hours devoted to classroom studies and four hours in the office." There is a significant amount of conflicting information in the record on this matter. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director reasonably concluded that the beneficiary would be engaged in productive employment.

The director determined that the petitioner did not establish that the proposed training is unavailable in the beneficiary's own country. The petitioner provided no evidence of the unavailability of training, beyond its own statements. The petitioner stated, "Because the training is comprehensive, progressive and tailored to the operations of this firm, it is mandatory that [the beneficiary] complete training here, as the training is not currently available in [the beneficiary's home country]." In response to the director's request for evidence, the petitioner also stated, "There is very limited training in the [beneficiary's home country]. The training in the U.S. is practically a day-to-day operation due to the volume of tax preparation business in the U.S." 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 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 addition, the AAO notes that the original proposed schedule only included five months of tax training. The AAO concurs with the

director that the petitioner did not establish that the training is not available in the beneficiary's own country, as required by the 8 C.F.R. § 214.2(h)(7)(ii)(A)(i).

The director found that the training does not have a fixed schedule, with objectives or a viable means of evaluation. The training program submitted with the petition is general, breaking the subject matter into segments to be covered in periods ranging from two to five months. There is little detail about what would be covered in each segment. The regulation explicitly states that no training program may be approved which deals in generalities with no fixed schedule.

Finally, the director found that the petitioner did not establish that it had the staff or physical plant to provide the proposed training. In his request for evidence, the director asked the petitioner to "[p]rovide evidence that the petitioner has the physical plant and sufficiently trained manpower to provide the training offered without impacting on the day-to-day business of the company." In response, the petitioner stated, "There are three full time trainers. One is on premise year round. The other two are on premise part time, one of which is the owner. . . . Office space totals approximately 4000 square feet for six full time employees during the heavy tax season, providing ample space to train." The petitioner did not provide any other information to establish that a 6-person business would be able to provide full-time training while continuing to provide its regular services. The petitioner also did not explain how there could be "three full time trainers," when only one is at the worksite year-round and the other two are part-time workers. The petitioner did not overcome the director's finding. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. 103.2(b)(8). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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.