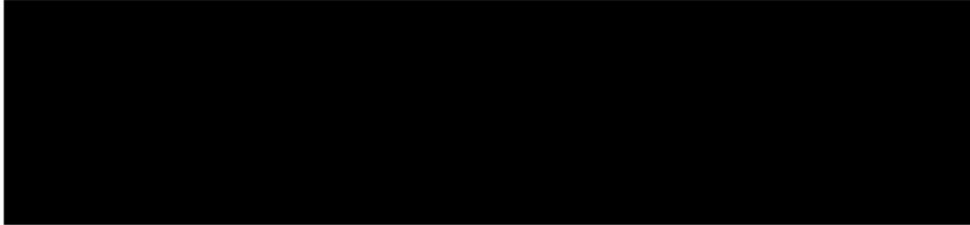


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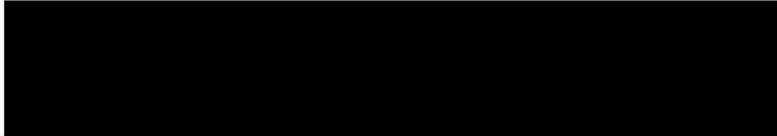
U.S. Citizenship
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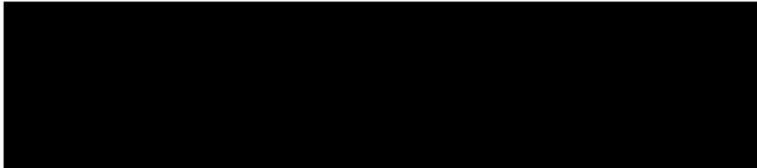
FILE: WAC 05 144 52079 Office: CALIFORNIA SERVICE CENTER Date: JUL 19 2006

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, 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 property management company that seeks to employ the beneficiary as a management trainee. The director found that the petitioner did not establish that the training was unavailable in the beneficiary's home country or that the training would benefit the beneficiary in pursuing a career abroad. The director determined that the training is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. The director stated that the training deals in generalities with no fixed schedule, objectives or means of evaluation and that the training is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The director also stated that the beneficiary would be engaged in productive employment beyond that which is incidental to 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 request for additional evidence; (3) the petitioner's response to the director's request; (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 first two elements of the regulations discussed by the director, establishing that the proposed training is unavailable in the beneficiary's home country and that the training will prepare the beneficiary for a career

abroad, are interrelated in this matter. The director found that the petitioner did not establish that the training was unavailable in the beneficiary's home country. On appeal, counsel states that evidence previously submitted, and discussed by the director in his decision regarding a seminar on property management in the beneficiary's home country "establishes that the training in the field of Property Management is scarce in the Philippines [the beneficiary's home country] and that is why training is imperative to be conducted here in the U.S." One topic of the referenced seminar was a discussion that included information about a post-graduate diploma program in property management from a university in the Philippines. In reviewing the website of that university, the program is described as teaching "students the discipline and giv[ing] them the skills and knowledge necessary on the roles, duties and responsibilities of building and property management professionals."¹ The diploma program is taught by members of the Philippine Association of Building Administrators. There is clearly an opportunity to be trained as a property manager in the beneficiary's home country.

In its letter of support and its response to the director's request for evidence, the petitioner and counsel stated that the beneficiary must have knowledge of its unique services in order to assist in the petitioner's planned expansion. The director requested evidence that the proposed training would prepare the beneficiary for a career abroad. Counsel responded that the petitioner intends to expand its operations to the beneficiary's home country, but there is no evidence in the record to support this statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner also stated that it planned to expand its business overseas, but provides no supporting evidence. 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 training is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. The director stated that since the beneficiary has substantial knowledge and skills related to the proposed training, and that since 70 percent of the training time would be on-the-job training, it appears that the beneficiary would be engaged in productive employment for the petitioner. On appeal, counsel states that the beneficiary has management, sales, finance and customer support experience, but she does not have property management experience. Counsel also states that the training is designed to provide the beneficiary with exposure to actual management, and that she would not be engaged in productive employment. Although the beneficiary does have some experience in many of the areas of the proposed training, based on her education and experience the AAO finds that the beneficiary does not possess substantial training and expertise in the proposed field of training. The petitioner has not, however, established that the beneficiary would not be engaged in productive employment. The proposed training program does not contain enough detail to establish exactly how the beneficiary would be spending her time, beyond the statement that on-the-job training accounts for 70 percent of the program. While there is no standard amount of time that is allowed for on-the-job training, without further detail, 70 percent could be considered to be productive employment beyond that which is incidental and necessary to the training. The

¹ <http://www.psi.dlsu.edu.ph/gsb/programs.asp>

petitioner did not establish that the beneficiary would not be engaged in productive employment. 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 stated that the training deals in generalities with no fixed schedule, objectives or means of evaluation. On appeal, counsel resubmits a copy of the training program and states that it “entails the structure of the training program including dates of the training, and who will supervise the trainee, and names of the instructors who will train the trainee.” Counsel provides no new evidence on appeal regarding the structure of the training program. The program submitted contains six segments ranging from two to four months each, in addition to a one-week orientation. While the petitioner provides a brief description of each segment, there is no clear schedule of how the beneficiary will spend her training time. The means of evaluation provided in response to the director’s request for evidence does not establish a structured evaluation process. The AAO concurs with the director that the proposed training deals in generalities, with no fixed schedule, objectives or means of evaluation.

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.