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U.S. Citizenship
and Immigration
Services

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APR 26 2007



FILE: LIN 06 122 51628 Office: NEBRASKA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 manufacturer of tools and other components for automobiles. It seeks to employ the beneficiary as a trainee for a period of three 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 Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted the Form I-290B on August 21, 2006. Although the petitioner submitted an appellate brief with the Form I-290B, it marked the box at section two of the form to indicate that a brief and/or evidence would be sent to the AAO within 30 days. However, the AAO never received this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to the petitioner and requested that the additional brief and/or additional evidence be sent within five business days. In response, the petitioner resubmitted a copy of the appellate brief it submitted with the Form I-290B. Accordingly, the AAO deems the record complete and ready for adjudication.

The director denied the petition on the basis of his determination that the petitioner had failed to establish the following: (1) that the petitioner had failed to establish that a valid, structured training program exists; (2) that the petitioner had failed to establish that the beneficiary does not already possess substantial training and expertise in the proposed field; and (3) that the petitioner had failed to establish that the training must be received in the United States.

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.

According to the training program syllabus submitted with the petitioner's response to the director's request for additional evidence, the proposed training program would consist of six components. The first component, which would occur on July 10 and July 11, would consist of classroom education. The second component, which would last from July 12 through August 31, would involve on-the-job training in the petitioner's tooling department. The third component, which would last from September 1 through September 26, would consist of four days of classroom discussion and three weeks of on-the-job training with computer-aided design (CAD) software and stamping die design. The fourth component would consist of four days of classroom instruction on production planning, and how to select materials suppliers and order materials. The fifth component would consist of three days of classroom instruction on paperwork and bookkeeping flow. The sixth component, which would consist of a meeting every Monday morning throughout the program, would involve instruction on scheduling projects and solving problems.

The AAO agrees with the director that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director found that the petitioner had failed to establish that a valid, structured training program exists. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a proposed training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner submits a more detailed schedule on appeal, which provides information for each week of the petitioner's proposed 12-week training program. However, the AAO finds that this schedule still deals in generalities. For example, the only information submitted about Week 7 is the following: "[c]ontinuation of training in the Tool room department to understand machineries in the English to Vietnamese language," and "[o]bserved [and] quizzed on all prior teachings as [w]ell as sitting with Senior Managements." Such a generic description does not allow a meaningful understanding of what the beneficiary would actually be doing.

In a similar vein, the only information regarding the last three weeks of the program (which would comprise one-fourth of the training period) is the following: "[q]uestions and [c]oncerns which will give time to review and answer."

The AAO agrees with the director. While the petitioner has offered additional information regarding the proposed training program, the information is still very general in nature. Such generalized information provides the AAO with no information on how the beneficiary would in fact be spending these 12 weeks; the referenced tasks do not appear to be of such complexity that they would require 12 weeks in order to perform them. Moreover, the AAO notes that the schedule offered on appeal differs considerably with

the schedule submitted in the petitioner's initial submission.¹ Accordingly, the AAO finds that approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A) in that the proposed training program deals in generalities.

The director also found that the petitioner had failed to establish that the beneficiary does not already possess substantial training and expertise in the proposed field. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a proposed training program that is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The AAO agrees with the director. According to the petitioner, the beneficiary possesses a bachelor's degree in mechanical engineering. He worked as a design engineer, CNC programmer, and research and development engineer for a manufacturer of small stamping dies and plastic molds between May 1999 and October 2004.

On appeal, the petitioner asserts the following:

It is agreed that [the beneficiary] has substantial training, but those trainings took place in Vietnam, an entirely different country with different work ethics, different government handlings[,] and different resources and to help understand FULLY the U.S. business extent, [the beneficiary] needs to see and experience first hand so that if U.S. future companies were to deal in Vietnam, he will know exactly how to go about business . . . [The beneficiary] does not have the training of work ethics and governments handlings in the United States, which [is] where most of our miscommunications have lied in the past couple of years between the two facilities and the disgruntle of lack of resource availability in Vietnam. This training program will enable him to understand, within the short period of time, the basic knowledge of how the corporate office in Ohio operates, as well as [to] understand what and how the engineering department is structured . . . The technology and skills that the Vietnamese natives obtain is not all that highly-rated and that type of training can only come from the U.S. [sic].

In essence, the petitioner has agreed that, while the beneficiary has a great deal of training in the field, the proposed training program is necessary because the training that the beneficiary has received in Vietnam is inferior to the training he could receive in the United States. However, the petitioner has submitted no documentary evidence to support such an assertion. Simply 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)). Accordingly, approval of the proposed training program is precluded in that the beneficiary already possesses substantial training.

The director also found that the petitioner had failed to establish that the proposed training must be received in the United States. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) requires a demonstration

¹ The petitioner submitted copies of various documents on appeal, all of which appear to involve some sort of training. However, the AAO does not accept these documents as evidence that this training program has been offered in the past. First, the AAO notes that these documents span a six-month period, from May 10, 2002 through November 5, 2002. The training program proposed here, however, is only 12 weeks long. Moreover, it appears that the training associated with these documents consisted of one meeting, the watching of one video, and a combined total of one hour of training (comprised of four 15-minute sessions in July, August, September, and November 2002).

that the proposed training is not available in the alien's own country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner to submit a statement which indicates the reasons why the training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States.

On appeal, the petitioner states that the majority of its customers are in the United States, and that the beneficiary "will need to be in the United States to visit customers first hand to ensure products are made and delivered according to our ISO standards of quality. The training program is developed to help [the beneficiary] run the Vietnam facility as accordingly [sic] to the U.S. facility." However, the petitioner has again failed to submit any evidence to support the assertion that the beneficiary can only obtain this training in the United States. The petitioner has not submitted any evidence to establish that this program or other programs similar to that offered by the petitioner are not available in Vietnam.² Again, 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 record contains no evidence, other than the assertions of the petitioner, that the type of training offered in the proposed training program is unavailable in the beneficiary's home country. Accordingly, the petitioner has not established that the proposed training is not available in Vietnam.

For the reasons set forth in the preceding discussion, the AAO 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.

² The question to be addressed when attempting to satisfy this criterion is not whether the petitioner offers this training in the alien's home country. The question is whether the training is available anywhere in that country.