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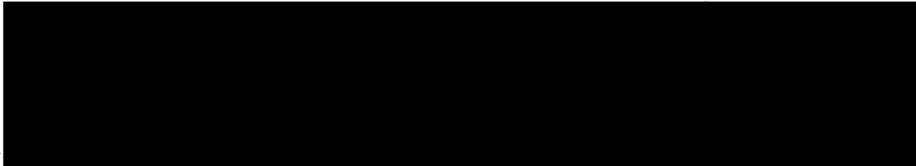
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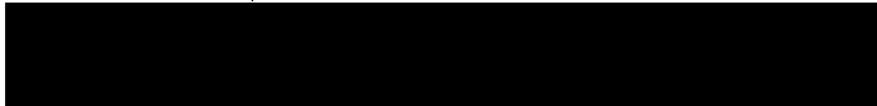
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FILE: EAC 07 084 51800 Office: VERMONT SERVICE CENTER Date: DEC 26 2007

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 sustained. The petition will be approved.

The petitioner is a restaurant and grocery store that seeks to employ the beneficiary as a trainee for a period of twenty-four 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 petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on five grounds: (1) that the petitioner had failed to establish that the proposed training is unavailable in Jordan, the beneficiary's home country; (2) that the petitioner had failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; (3) that the petitioner had failed to demonstrate the existence of a well-structured training program; (4) that the petitioner had failed to demonstrate the methods by which the beneficiary would be evaluated; and (5) that the petitioner had failed to demonstrate that it has sufficiently trained manpower to provide the training specified.

On appeal, counsel 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.

In the program syllabus submitted at the time the petition was filed, the petitioner stated the following:

[The petitioner] was founded in 2002. The business started with (3) employees. The founders had as their primary objective the establishment of a Middle East restaurant and grocery store. During the years to follow, the business grew steadily by attracting an increasing number of customers from diverse backgrounds . . . [T]he business is well-known in the local area and provides services to hundreds of diverse customers. . . .

* * *

Currently, this successful business is planning to expand its operations overseas, specifically in the Middle East, Jordan. The business is in the process of evaluating several sites in Jordan in order to determine its precise potential location in the latter country. . . .

* * *

This is an application for a training visa on behalf of a chief manager of the Jordan-based business. After the completion of the training, the trainee will possess knowledge of the U.S. business and management principles involved in strategic planning, resource allocation, human resources, leadership techniques, and coordination of people, resources, and services. . . .

The object of [the petitioner's] training program is to familiarize the trainee with the intricacies of setting up complex commercial equipment while working with diverse players in order to prepare him to fulfill his duties as chief manager of the planned Jordan-based facility.

According to the petitioner, the proposed training program would consist of eight components. During each component, the beneficiary would spend time observing managers in their day-to-day activities. The first component, entitled "Recruitment and Training of Personnel," would last three months. During this period, the beneficiary would spend fifty percent of his time in on-the-job training and fifty percent of his time in classroom instruction. He would complete three assignments, each of which would last for four weeks. In the first assignment, the beneficiary would interview several applicants who have applied for a position as a clerk. He would research the latest American hiring techniques and apply them at the interviews. He would also prepare a presentation regarding the highlights and unusual aspects of each interview. In the second assignment, the beneficiary would assist in the training of a newly hired employee. He would outline several training outlines for the supervisor to view, rank them in order of efficiency, and recommend one to the supervisor. In the third assignment, the beneficiary would prepare and summarize various strategies of how to incorporate the newly-hired into the existing team. He would research and summarize the characteristics of the existing team and the new hire, analyze and record points of convergence and divergence, predict possible points of congruence and friction, and prepare recommendations on increasing the probability of coherent teamwork.

The second component, entitled "Management of Personnel Resources," would also last three months. This component would be broken into three sections: (1) researching and becoming familiar with the latest time management programs and techniques (sixty percent classroom instruction/forty percent on-the-job training); (2) assisting the supervisor in creating the weekly schedule (fifty percent classroom instruction/fifty percent on-the-job training); and (3) researching the latest U.S. strategies of leading by

means of persuasion, summarizing his findings, and applying some of the techniques during a staff meeting (seventy percent classroom instruction/thirty percent on-the-job training).

The third component, entitled "Coordination of People and Resources," would also last three months. This component would also be broken into three sections: (1) studying U.S. techniques of business organization and distribution of tasks, and assisting the supervisor in the assignment of various personnel to different tasks (fifty percent classroom instruction/fifty percent on-the-job training); (2) assisting with the design and production of payment charts, observing the supervisor annotate and update payment plans, and attending lectures about inventory methods and their application (fifty-five percent classroom instruction/forty-five percent on-the-job training); and (3) attending staff meetings, researching the latest models of effective business communication, using his findings at staff meetings, and attending lectures on business communications and teamwork (fifty-five percent classroom instruction/forty-five percent on-the-job training).

The fourth component, entitled "Promotion and Sale of Services," would also last three months, and would also be broken into three sections: (1) taking instruction on analyzing pricing, and attending lectures on marketing and motivational selling (fifty percent classroom instruction/fifty percent on-the-job training); (2) market analysis and research, identifying possible applications of findings in the Jordanian and other Middle Eastern markets, and attending lectures on international trade and current opportunities for business expansion (eighty percent classroom instruction/twenty percent on-the-job training); and (3) collecting statistics from journals and publications, preparing summaries of his findings, assisting in service-launching meetings, and attending lectures on statistics and their applications (sixty-five percent classroom instruction/thirty-five percent on-the-job training).

The fifth component, entitled "Meeting of Quality Standards," would also last three months, and would be broken into two sections: (1) taking instruction from staff members regarding reports and government information that should be monitored for current import/export regulations, and attending lectures on industry monitoring skills (seventy-five percent classroom instruction/twenty-five percent on-the-job training); and (2) researching current U.S. quality standards that are applicable to foreign-based companies, and attending lectures on quality standards (seventy percent classroom instruction/thirty percent on-the-job training).

The sixth component, entitled "Knowledge of Principles and Processes of Providing Customer Satisfaction," would also last three months, and would be broken into three sections: (1) developing and sorting indicators of customers satisfaction, charting findings and presenting them to supervisors, and attending lectures on methods of tracking and documenting customer satisfaction (sixty percent classroom instruction/forty percent on-the-job training); (2) monitoring customer satisfaction, observing customers while in the business, engaging customers in casual conversation regarding quality of products and service and recording findings, and attending more lectures on the various methods of tracking and documenting customer satisfaction (fifty percent classroom instruction/fifty percent on-the-job training); and (3) designing methods to enhance customer satisfaction and presenting them to supervisors, testing these methods, and attending lectures on linkages between customer satisfaction and business viability (fifty percent classroom instruction/fifty percent on-the-job training).

The seventh component, entitled "Resolution of Customer Grievances," would also last two months. During this period, the beneficiary would spend fifty percent of his time in on-the-job training and fifty percent of his time in classroom instruction. He would also complete two three-week assignments during this time. In the first assignment, he would research the petitioner's database and locate all customer grievances over the past twenty-four months. He would identify clusters of grievances and common

bases triggering those complaints, and prepare a summary of his findings. In the second assignment, he would identify the most recent complaints. Under the close direction of a staff member, the beneficiary would contact those customers and identify the factors that caused their complaints, and prepare a summary of his findings. During this component of the training program, the beneficiary would spend a minimum of fifty percent of his time in classroom instruction.

The eighth component, entitled "Supervision of Financial Expenditures," would last four months. During this period, the beneficiary would spend fifty percent of his time in on-the-job training and fifty percent of his time in classroom instruction. He would also complete two three-week assignments during this time. In the first assignment, he would research recent American business money management programs. He would identify the simplest and most efficient programs, and present his findings to a supervisor. In the second assignment, he would review all expenditure reports from the last two years, attempt to find occasions when money was spent unwisely, and prepare a report highlighting various techniques to manage money more effectively.

The director found that the petitioner had failed to establish that the proposed training could not be obtained in Jordan, the beneficiary's home country. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to demonstrate that the proposed training is not available in the alien's own country, and 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires a statement from the petitioner indicating the reasons why the proposed training cannot be obtained in the alien's home country and why it is necessary for the alien to be trained in the United States.

The AAO notes that the question to be addressed when attempting to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5) is not whether the petitioner offers this training in the alien's home country. Whether the petitioner itself offers similar training in the beneficiary's home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiary's home country, irrespective of whether it would be provided by the petitioner or another entity.

In the present case, the reason for creation of the training program is to train the beneficiary on the petitioner's business practices. The petitioner in this case has submitted evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another grocery store in Jordan. The AAO also notes that the petitioner has submitted information to establish that it is actively searching for commercial space in Jordan. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in Jordan, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The director also found that the petitioner had failed to establish that the beneficiary would not be engaged in productive employment beyond that incidental and necessary to the training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

In his denial, the director stated the following:

The proposed training includes on-the-job training for approximately fifty percent of the time. In a small restaurant/grocery that employs nine people, it is not clear that the training would require that amount of on-the-job training. It is also not clear how the beneficiary would not be engaged in productive employment beyond [that] which is incidental and necessary to the training, particularly over a two-year period.

The AAO acknowledges the director's concern in this regard, and agrees that, in many cases, it would be questionable whether a company of the petitioner's size, scope, and scale of operations would be truly training an individual over a twenty-four-month period, or whether it would in fact be placing that individual in productive employment. However, the petitioner in this particular case has submitted extensive documentation regarding its proposed training program, and it has provided detailed information regarding what the beneficiary would actually be doing during that time. The AAO also notes that, in this case, the terms "on-the-job training" and "productive employment" are not synonymous. The AAO notes that during the on-the-job training portion of its proposed training program, the beneficiary would be performing such tasks as attending staff meetings, performing research, preparing charts and reports, reviewing journals and publications, performing assignments, and preparing budgets, all as part of his training. In her April 28, 2007 appellate brief, counsel states the following:

The petitioner's training program schedule clearly explains the type of training and the time devoted to each topic. The on-the-job training, which never exceeds 50%, is mainly instructional rather than actual productive labor. Furthermore, the on-the-job training will primarily be used to clarify and solidify the concepts and skills learned during classroom instruction.

* * *

The proposed on-the-job training is not productive employment. It is primarily instructional, incidental, and necessary to the training [emphasis in original].

Based upon the extensive documentation contained in this record, the AAO concludes that the on-the-job training described of record does not constitute productive employment beyond that incidental and necessary to the training. The AAO therefore finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(ii)(3) and 214.2(h)(7)(iii)(E), and withdraws that portion of the director's decision finding the contrary.

The director also found that the petitioner had failed to demonstrate the existence of a well-structured training program, as well as the methods by which the beneficiary would be evaluated. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The AAO incorporates here its earlier outline of the proposed training program's schedule; further details exist in the record. The petitioner has provided extensive details regarding what the beneficiary would actually be doing over the course of the twenty-four month training period. Moreover, as noted by counsel on appeal, page 5 of the trainer's manual, submitted in response to the director's request for additional evidence, provides the training areas in which the beneficiary will be evaluated, as well as the methods by which he will be evaluated. The AAO finds that the petitioner has established that its proposed training does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

The AAO therefore finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A), and withdraws that portion of the director's decision finding the contrary.

Finally, the AAO notes that the director found that the petitioner had failed to demonstrate that it has sufficiently trained manpower to provide the training specified. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition that does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified.

In his denial, the director stated that there is no evidence in the record to establish that the petitioner "can actually employ a full time trainer." In her appellate brief, counsel refers to a notarized affidavit, attested to by the petitioner's owner on February 16, 2007:

[W]e have developed an elaborate training program. We have never recruited or hired trainees in the past, as it has not been deemed necessary. We are not planning to employ a full-time trainer: I will personally train the trainee and remain responsible [for] his progress.

I run a profitable business. We can simultaneously operate a training program and maintain the level of business profitably.

The AAO has no reason to doubt the petitioner's veracity. In this case, the petitioner has established that, although it is a small company, its owner will be able to assume responsibility for the training program and still run the business. The AAO finds that the petitioner has established that it has the personnel to provide the training specified. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(G), and the AAO withdraws that portion of the director's decision finding the contrary.

The petitioner has provided detailed information regarding the objectives of its proposed training program, the proposed duties, the means and methods of evaluation, and the supervision that would be provided. It has established the existence of a well-structured training program, and that the beneficiary would not engage in productive employment beyond that which is incidental and necessary to the training. While much of the training would be on-the-job training, the petitioner has established that such training would not be productive in nature. It has also established that the training is not available in Jordan.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.