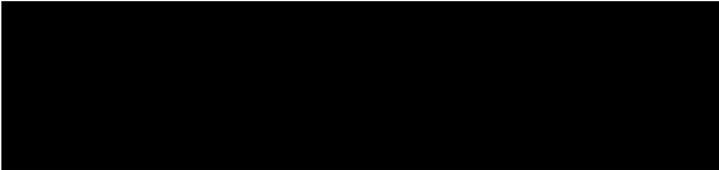


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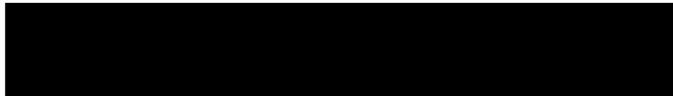


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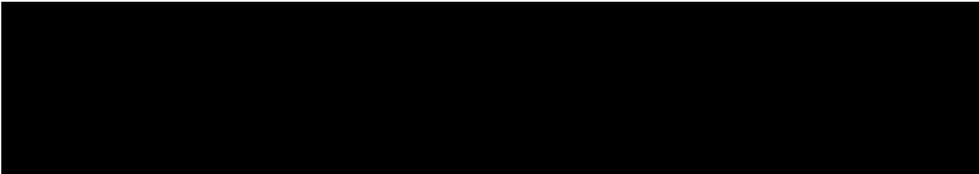
FILE: WAC 06 007 52289 Office: CALIFORNIA SERVICE CENTER Date:

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:



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 wholesale clothing distributor that seeks to employ the beneficiary as a U.S. marketing and merchandise distribution trainee for a period of nineteen 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 director denied the petition on the basis of his determination that the petitioner had failed to establish the following: (1) that the proposed training is unavailable in the beneficiary's home country; (2) that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; (3) that the proposed training program has a fixed schedule, objectives, and a means of evaluation; and (4) that the beneficiary would not engage in productive employment beyond that necessary and incidental to the training program. The director noted that the petitioner had failed to provide information that was specifically requested, such as the names and social security numbers of past trainees.

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.

According to the training program syllabus submitted with the petitioner's September 9, 2005 letter of support, the proposed training program would last nineteen months. According to this syllabus, the purpose of the training program is "[t]o educate the Marketing and Merchandise Distribution Trainee in all areas of our company operations, and provide the trainee with a range of specific professional skills relating to the specialized marketing and merchandise distribution techniques utilized by the company." The petitioner stated that the trainee would receive "approximately 65% academic training and 35% on the job training."

According to the petitioner, its proposed training program consists of four phases. The first phase, which would last three months, would consist of two sessions: (1) General Orientation: Company Structure, Personnel, and Policy; and (2) Management Level Exposure. The second phase, which would last seven months, would consist of four sessions: (1) Product Orientation: Product Types, Materials, Product Codes, and Cost; (2) Sales and Distribution Management; (3) Management Information Systems: Accounting, Inventory, and Research; and (4) Warehousing and Packaging. The third phase, which would last seven months, would consist of five sessions: (1) Specialized Marketing: Market Study; (2) Specialized Marketing: Product Survey; (3) Specialized Marketing: Contract Bidding; (4) Merchandise Strategies; and (5) Import and Export Transactions. The fourth phase, which would last two months, would consist of "an exhaustive evaluation and preparation for placement abroad in the future affiliate office of [the petitioner]."

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 not established that the training was not available in the Philippines, the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration 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.

No evidence to establish this criterion was submitted with the petitioner's initial filing. As such, in his December 29, 2005 request for additional evidence, the director stated the following:

The evidence is insufficient to establish [that] the training offered by the petitioner is not available in the beneficiary's home country. State additional reasons and provide evidence that shows why this training cannot be obtained in the beneficiary's own country and why it is necessary for the alien to be trained in the United States (emphasis in original).

The director noted that such evidence could include publications, letters from public or private professional, business, trade, and licensing organizations, and affidavits or declarations from recognized authorities regarding the unavailability of such training in the Philippines.

Counsel provided no such evidence in her March 7, 2006 response to the director's request. Counsel stated the following:

The U.S. marketing techniques have always been proven to be the most successful and so we therefore firmly believe that there is no substitute for the training program that [the petitioner] offers which is dedicated solely for the conceptualization, and practice of the U.S. marketing techniques which could only be learned by physically being present here in the U.S. and receiving “hands on” training.

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)). 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 record contains no evidence, other than the assertions of counsel and the petitioner, that the type of training offered in the proposed training program is unavailable in the beneficiary's home country.

No evidence regarding this matter was submitted on appeal, and counsel does not address this issue in her appellate brief. The petitioner has not established that this type of training is unavailable in the Philippines and, accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(I).

The director found that the petitioner did not establish that it has the physical plant and sufficiently trained manpower to provide the training. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes CIS from approving a proposed training program where the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified.

The petitioner has not established that it has the physical plant to provide the training specified. In his request for evidence, the director stated the following:

Training Facilities: Describe the facilities where the training will be given. Indicate if the petitioner has a regular full-time training facility that provides year-round training. Provide evidence that the petitioner has the physical plant, equipment, and sufficiently trained and qualified manpower to provide the training offered (emphasis in original).

The petitioner did not submit the requested description of the facilities where the training would be provided. On appeal, counsel does not submit the requested description of the facilities where the training would be provided. Rather, she resubmits a copy of her March 7, 2006 response to the director's request for additional evidence (which did not include the requested description) and states that this response “included all the requested items which the petitioner believed was adequate since it is all that the Service requested.” The record, as currently constituted, lacks the requested description of the facilities where the training would be provided. The 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). Nor is there any other evidence to support a finding that the petitioner has the facilities to support the proposed training program.

Thus, the petitioner has not established that it has the physical plant to provide the proposed training.

Nor has the petitioner established that it has sufficiently trained manpower to provide the training specified.

In his request for additional evidence, the director specifically requested additional evidence to demonstrate that the petitioner has such sufficiently trained manpower, and requested an organizational chart to show how its business is organized. The director gave specific instructions regarding the information that the organizational chart was to contain:

Petitioner's Organization Chart: Submit a copy of the petitioner's line and block organization chart that shows how its business is organized. The chart should distinguish each department or subdivision and clearly identify the location of the petitioner's training division within the organizational hierarchy. Show all of the employees in the training division by name and job title, and include a brief description of their job duties (emphasis in original).

While the petitioner did submit an organizational chart, it did not provide the information requested by the director. The organizational chart did not identify the location of the petitioner's training division within the organizational hierarchy. It did not list all of the employees in the training division by name and job title, and it did not provide a brief description of their job duties.

Without this information, there is no evidence in the record that would allow the AAO to determine that the petitioner has sufficiently trained manpower to provide the proposed training. According to the Form I-129, the petitioner employs "7-10" individuals. According to an e-mail from the petitioner to counsel's office contained in the record, the petitioner has four employees. According to the program syllabus discussed previously, these four employees are the same individuals who are to instruct the second and third phases of the proposed training program, which are to collectively last fourteen months. Relying on such a large percentage of its staff to conduct this training program is not indicative of sufficient manpower.

Nor has any evidence been submitted regarding the training of any of the individuals who are to provide the proposed training. In his request for additional evidence, the director specifically requested evidence that the petitioner has sufficiently trained and qualified manpower to provide the training offered.

In her response, counsel stated that "the resumes of the various personnel who will conduct the training program" were enclosed as "Exhibit C." However, the only information submitted in "Exhibit C" was a single-page timeline discussing the history of the company's founding. No information regarding the training of any of the petitioner's employees was submitted. Again, the 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).

Counsel did not address this issue on appeal; rather, she resubmits copies of documents already contained in the record of proceeding.

For the preceding reasons, approval of the proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(G).

The director also found that the petitioner did not establish that its proposed training program has a fixed schedule, objectives, and a means of evaluation. 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.

In his request for additional evidence, the director requested the total number of full-time trainers on the petitioner's staff and, if no such persons are employed, whether the duties of the trainers are collateral and a description of the work they normally do when not performing in a training capacity. The director also requested the names of who exactly would provide the classroom training, and who would provide the on-the-job training. The director requested information regarding the petitioner's previous training programs, which was to include lesson plans and dates, course materials, and names and social security numbers of attendees.¹ The director also requested additional information regarding the proposed training program, which was to include more detailed information regarding the type, structure, and objectives of the program, as well as the supervision to be given.

In his denial, the director stated that the petitioner had provided no additional evidence to support a finding that there was a bona fide training program with a fixed schedule, objectives, and a means of evaluation. On appeal, counsel resubmits the descriptions of the proposed training program that were before the director at the time his decision was issued.

The AAO agrees with the director. While the petitioner did offer additional information regarding the training program in response to the director's request for additional evidence, the information is still very general in nature. For example, the first phase of the training program is to last for three months, and consists of two sessions. The first session involves such tasks as learning about employee policies, learning the names of the petitioner's "key personnel," and taking a tour of the petitioner's facility and warehouse. The second session involves such tasks as attending a lecture regarding the principles of retail management, the definition of merchandising sourcing terms, new technology and trends, and industry leaders. Such generalized information provides the AAO with no information on how the beneficiary would in fact be spending these three months; the referenced tasks do not appear to be of such complexity that they would require three months in order to perform them.

The rest of the petitioner's description of its proposed training program suffers the same deficiency: it lacks sufficient details and information regarding what the beneficiary would actually be doing on a day-to-day basis.

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.

¹ On appeal, counsel states that this information was not requested. However, it was clearly requested at page 3 of the director's December 29, 2005 request for additional evidence. The regulation at 8 C.F.R. § 214.2(h)(9)(ii) provides that the director shall consider all evidence submitted and "such other evidence as he or she may independently require to assist his or her adjudication." As noted previously, the 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). Counsel has not explained the petitioner's failure to submit information regarding other individuals who have participated in the training program in the past, and has still not submitted this information on appeal.

Finally, the director also found that the petitioner had failed to demonstrate that the beneficiary would not engage in productive employment beyond that necessary and incidental to the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(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.

The AAO agrees. As noted previously, it is unclear to the AAO how, if four (of four total or 7-10 total employees, depending upon the source) of the petitioner's employees are to conduct the bulk of the training, these employees will be able to perform their own duties, unless the beneficiary would be performing productive employment on her own that would not require supervision.

Finally, the AAO notes that counsel highlights a typographical error by the director regarding the nature of the petitioner's proposed training program. However, this does not affect the outcome of the AAO's decision, or the validity of the director's reasoning in his denial. The AAO finds that this typographical error was harmless error on the part of the service center.

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.