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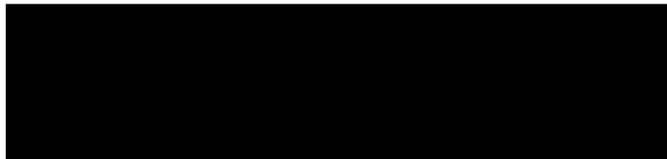
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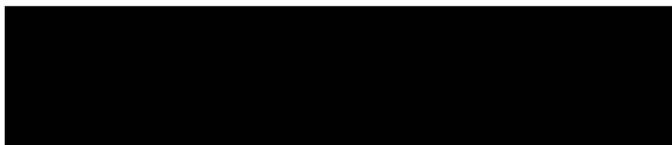
FILE: SRC 06 092 53559 Office: TEXAS SERVICE CENTER Date: JAN 03 2007

IN RE: Petitioner:  
Beneficiary:



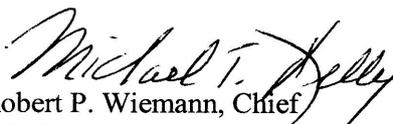
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.

*for*   
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 an interior design firm with stated gross annual income of \$375,000 and seven employees that seeks to employ the beneficiary as a management trainee for a period of eighteen 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, stating, in relevant part, the following:

The evidence submitted for the training program indicated that it was a sixteen [sic] month program yet only four months actually involves Feng Shui Indoor Applications. The remaining areas of training include aspects in which the beneficiary already possesses substantial training and expertise to include Interior Design Basic Training . . . the documents submitted substantiate that the beneficiary is professionally familiar with Interior Design. In regards to the foreign availability of the training program, the petitioner provided a statement indicating that the management trainee program is not available in the alien's own country of Venezuela. Yet contrary to the petitioner's claim, there are facets of the training program which are not exclusive to the U.S. to include carpentry, cabinetry, sales/market research and customer service as well as Feng Shui which is internally prevalent.

Additionally, it has not been established that the petitioner has adequate personnel and resources to provide the level of training proposed. The majority of the areas in [the] training program (50%) is being conducted on a part-time basis by two principals of the company and two areas are covered by the two construction managers and one by the executive secretary. Also, the lease that was provided is for a residential apartment in which the photos confirm. Consequently, it has not been demonstrated that the purported facility in which the training is to be held supports a classroom training environment. Thus, [although] the petitioner asserts the Human Resources Manager coordinates and directs all aspects of the training program it has not been evidenced that this position even exists within the company nor does the organizational hierarchy support this claim. . . .

Though our office requested evidence of who conducts the training to include background information on the trainers, such as their level of experience, copy of degrees as indicated, training tenure, evidence of other individuals who have taken this training previously, the duration of their training and detailed information about the subsidiary company in Uruguay along with evidence to establish [the] parent company's ownership. . . .

On appeal, counsel asserts 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 petitioner's January 27, 2006 letter of support, the proposed training program would last eighteen months. According to this letter, "[t]he purpose of this program will be to provide [the beneficiary] with expertise and knowledge in all factors involved in the design, product development, marketing, distribution[,] and technical support management of Feng Shui Interior Design." The petitioner stated that after completion of the proposed training program, the beneficiary would work as an interior design director at the petitioner's Uruguayan subsidiary.<sup>1</sup> The petitioner explained that this training is unavailable in Venezuela, the beneficiary's home country, "as the petitioner's principal place of business and showroom are in the United States."

According to the petitioner, its proposed training program consists of two components: classroom-type assignments to be completed at the petitioner's headquarters and on-the-job experience in the other income-producing areas of the petitioner's operation. The beneficiary would acquire specific skills in six areas: (1) interior design basic training, (2) carpentry and cabinetry training, (3) Feng Shui indoor

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<sup>1</sup> Later in this same letter, the petitioner stated that the beneficiary would work as the procurement manager at the petitioner's Uruguayan subsidiary. The petitioner has not explained this conflicting information.

applications, (4) sales and interior design marketing research, (5) Feng Shui purchasing and management, and (6) customer service.

The beneficiary's training in interior design basic training would last three months. Fifty percent of this time period would be spent on classroom-type assignments and fifty percent would be spent acquiring on-the-job experience.

The beneficiary's training in carpentry and cabinetry training would also last three months. Twenty-five percent of this time period would be spent on classroom-type assignments and seventy-five percent would be spent acquiring on-the-job experience.

The beneficiary's training in Feng Shui indoor applications would last four months. Fifty percent of this time period would be spent on classroom-type assignments and fifty percent would be spent acquiring on-the-job experience.

The beneficiary's training in sales and interior design marketing research would last three months. Fifty percent of this time period would be spent on classroom-type assignments and fifty percent would be spent acquiring on-the-job experience.

The beneficiary's training in Feng Shui purchasing and management would last three months. Fifty percent of this time period would be spent on classroom-type assignments and fifty percent would be spent acquiring on-the-job experience.

The beneficiary's training in customer service would last two months. Fifty percent of this time period would be spent on classroom-type assignments and fifty percent would be spent acquiring on-the-job experience.

According to the petitioner, all aspects of its proposed training program would be coordinated and directed by its human resources manager. The petitioner explained that the human resources manager would conduct evaluations at the completion of each phase of the proposed training program.

The petitioner stated that its training program was established in 2004 and that, at the time the letter of support was written in January 2006, six trainees had successfully completed the program.

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 Venezuela. 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. As noted previously, the petitioner stated in its letter of support that the training is unavailable in Venezuela, the beneficiary's home country, "as the petitioner's principal place of business and showroom are in the United States." On appeal, counsel states that the training regarding the petitioner's method of sustainable development is unique, and cannot be learned anywhere else.

However, 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. Counsel does not submit evidence establishing that Feng Shui programs or other programs similar to that offered by the petitioner are not available in Venezuela. The statement by the petitioner that the program is unique to the petitioner is not supported by the 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 petitioner has not established that this type of training is unavailable in Venezuela. 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. The petitioner stated the following in its letter of support:

Each management trainee will receive classroom-type assignments that will be completed at our headquarter offices. Senior managers will provide the trainees with an extensive survey of the substantive aspects of the industry. The trainees will complete these assignments in the respectively assigned desk space, and then be evaluated by their corresponding supervisors.

As noted by the director, the facility in which the classroom training is to be held is a residential apartment. On appeal, counsel states that the director "erred in fact by finding the office to be a residence," and submits a letter stating that "nothing in this lease says that this unit cannot be used for commercial purposes." However, the lease specifically states the following:

**4. Use of Premises.** The demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family residence.

This plain language of the lease conflicts directly with counsel's assertion that the director committed error in finding the office to be a residence. The petitioner, on appeal, submits an undated letter from the lessor, who indicates that the petitioner leases the unit as an office, and that [n]othing in this lease says the unit cannot be used for commercial purposes." The lessor does not explain the language of the lease indicating that commercial use is prohibited. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the petitioner has not established that it has the physical plant to provide the training.

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

As noted previously, the petitioner stated that all aspects of its proposed training program would be coordinated and directed by its human resources manager. The petitioner explained that the human resources manager would conduct evaluations at the completion of each phase of the proposed training program. However, as noted by the director, the petitioner has not established that such a position even exists. The petitioner's list of employees contains seven employees: president, vice president, junior architect, junior designer, two construction managers, and executive secretary. "Human resources manager" does not appear on the list. The petitioner does not explain this discrepancy in the record, and on appeal counsel does not respond to the director's highlighting of this issue. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In her denial, the director also noted that the petitioner had not submitted copies of credentials requested in her request for additional evidence. Specifically, the AAO notes that the petitioner did not submit, as requested, copies of the trainers' degrees as indicated and evidence of other individuals who have participated in the training program previously.

In response, counsel states the following on appeal:

There is no need to provide a copy of the degrees, particularly when there are over 18 degrees and licenses mentioned in the evidence provided. It is presumed that the evidence provided is not fraudulent unless there is reason to believe it is. None of the positions are tenured because it is not a university, and it is not required to be. Just because the kitchen sink is requested does not mean it has to be presented if the question or issue raised is resolved by credible, meaningful[,] and relevant documentation.

The AAO does not agree. The director's single-page February 6, 2006 request for evidence consisted of four bullet-pointed requests. One bullet-pointed request asked for evidence regarding the qualifications of the trainers, including copies of their degrees. The AAO notes that the regulation requires the petitioner to establish that it has sufficiently trained manpower. Another bullet-pointed request asked for information regarding other individuals who have participated in the training program in the past.<sup>2</sup> The petitioner chose not to respond to the director's request.

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." 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 AAO finds that counsel's explanation of the petitioner's failure to submit copies of the trainers' diplomas is not an adequate response to the director's request to submit proof of the trainers' credentials. The AAO also notes that counsel has not explained the petitioner's failure to submit information regarding other individuals who have participated

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<sup>2</sup> The petitioner had asserted in its letter of support that its training program had been established in 2004 and that it had trained six trainees in the program by January 2006.

in the training program in the past. Accordingly, approval of the proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(G).

The director found that the petitioner did not establish that the beneficiary did not already possess substantial training and expertise in the 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. The petitioner stated in its letter of support that the beneficiary is professionally familiar with interior design, with six years of education in architecture and interior design. Although the petitioner noted that this education was not Feng Shui-specific, the AAO notes that only four months of the sixteen-month training period would focus on Feng Shui principles.

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

Beyond the decision of the director, the AAO finds that the petitioner has failed to establish other regulatory requirements for the trainee visa.

The regulation at 8 C.F.R. § 214.2(h)(7)(A)(ii)(3) requires a demonstration that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training.

According to the training schedule the beneficiary would spend fifty percent of his time acquiring on-the-job experience in fifteen of the eighteen months of the program. During the other three months (the carpentry and cabinetry training period), he would spend seventy-five percent of his time acquiring on-the-job experience. The beneficiary will earn \$30,000 per year.

The AAO finds that devoting such a high proportion of the beneficiary's time to on-the-job experience will place the beneficiary in the normal operation of the business. Further, the petitioner's wage statement indicates that four of its employees are earning \$15,000 or less per annum. Thus, the petitioner has not established that the beneficiary will not be engaged in productive employment in relation to others at the company.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to submit a statement which describes the career abroad for which the training will prepare the alien.

As noted previously, the petitioner's January 27, 2006 letter in support of the petition stated that after completion of the proposed training program, the beneficiary would work as an interior design director at the petitioner's Uruguayan subsidiary. Later in this same letter, the petitioner stated that the beneficiary would work as the procurement manager at the petitioner's Uruguayan subsidiary. The petitioner has not explained this conflicting information. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(4).

For these additional reasons, the petition may not be approved.

Finally, the AAO notes that counsel has submitted two expert opinions on appeal. One opinion states that classroom instruction is an antiquated approach which the author uses sparingly, and the other states that textbook instruction is impractical to train personnel for day-to-day responsibilities.

The reason for submission of these opinions is unclear. The petitioner has already stated that over fifty percent of the beneficiary's time would be spent on "classroom-type assignments," so it unclear how asserting that such a high percentage of the beneficiary's time would be spent on an antiquated approach aids the petitioner's case. Regardless, these opinions do not overcome the deficiencies of the petition as set forth above.

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.