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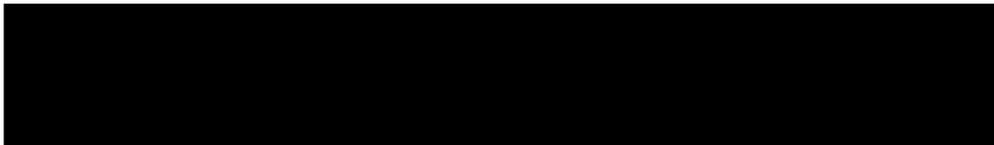


FILE: WAC 06 131 51282 Office: CALIFORNIA SERVICE CENTER Date: OCT 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, a manufacturer of carbide cutting tools, seeks to employ the beneficiary as an engineering manager trainee for a period of fifteen 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 seven grounds: (1) that the petitioner had failed to demonstrate that the proposed training is not available in the Philippines, the beneficiary's home country; (2) that the petitioner had failed to establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States; (3) that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program; (4) that the petitioner had failed to adequately set forth the proportion of time that would be devoted to productive employment; (5) that the petitioner had failed to adequately describe the number of hours that would be spent, respectively, in classroom instruction and in on-the-job training; (6) that the petitioner had failed to demonstrate that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (7) that the petitioner had failed to demonstrate that the beneficiary would not be placed in a position which is in the normal operation of business and in which citizens and resident workers are regularly employed.

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;

- (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 its March 3, 2006 letter of support, the petitioner described its company as follows:

For over sixty years [the petitioner's name] has meant cutting tool manufacturing technology second to none. A wealth of tool design and application knowledge combined with expert fabrication is what makes [the petitioner] exceptional.

All of our engineers are trained in diverse areas of engineering. This ensures that all of our clients receive in-depth care and professional services on their projects.

The petitioner stated the following with regard to why it is offering the proposed position to the beneficiary:

[The petitioner] is currently negotiating the establishment of a branch company in the Philippines. This country is one of the fastest growing countries in Asia that will provide a very good potential market share according to our analysis. We, therefore, wish to place a technical personnel [sic] that is native to the country in which he will be working, [the beneficiary], as an Engineering Manager Trainee. We have an in-house training program to provide our trainees with expertise in all areas of cutting tool manufacturing technology.

Upon completion of the training program, [the beneficiary] will handle the multitude of managerial duties and tasks which will play a vital role in our potential success in our branch office in the Philippines.

* * *

The goal of the training program is to provide [the beneficiary] with the expertise[,] knowledge[,] and practical experience in [the] engineering practices our company participates in. This will equip him with the ability and insight to meet the needs of our forthcoming branch office. Moreover, the training will give the trainee first-hand knowledge of the operations of our business before taking the permanent manager positions [sic] in our branch office.

According to the petitioner, by the end of the proposed training program the beneficiary would understand computer numerical control (CNC) so that he can design fixtures and cutting tools for use with the petitioner's CNC machines, and to understand the CNC machine tools used by the petitioner in order to plan quality statistical process control. The proposed training program would introduce five key concepts: (1) fundamentals of CNC; (2) know your machine; (3) understand the motion types available on

the petitioner's CNC machine; (4) understanding the forms of compensation; and (5) understanding how to format programs.

According to the program syllabus submitted with the petitioner's letter of support, the proposed training program would last sixty-five weeks. During the first seven weeks of the training program, the beneficiary would complete such introductory tasks as learning the basic design of the CNC lathe and CNC control; safety functions and devices; turning on the machine and the CNC control; basic trigonometry; cycles for turning, facing, and threading; the user parameters, and maintaining the CNC lathe.

The eighth through seventeenth weeks of the proposed training program, referred to collectively as "Basic CNC Programming Courses," would consist of six components: (1) know your machine; (2) prepare to write programs; (3) motion types; (4) compensation types; (5) program formatting; and (6) special programming features.

The eighteenth through thirty-eighth weeks of the proposed training program, referred to collectively as "CNC Machining Center Set Up and Operation," would consist of six components: (1) tasks related to set-up and operation; (2) machine configurations; (3) work holding set-up; (4) cutting tools; (5) running the first work piece; and (6) completing a production run.

The thirty-ninth through forty-fifth weeks of the proposed training program would consist of twenty lessons, with such titles as techniques with basic motion types and motion manipulation techniques.

The forty-sixth through sixty-fifth weeks of the proposed training program, referred to collectively as "CNC Machine Maintenance," would consist of five components: (1) engineering principles for maintainers and operators; (2) equipment maintenance best practice; (3) maintenance philosophies and methods; (4) maintenance management and asset management; and (5) fault finding and troubleshooting checklist.

In its November 3, 2006 response to the director's request for additional evidence, the petitioner stated that during the first seventeen weeks of the proposed training program, the beneficiary would spend four hours per day in classroom instruction and three hours per day in on-the-job training. During the last forty-eight weeks of the training program, the beneficiary would spend six hours per day in classroom instruction and two hours per day in on-the-job training.

Upon review, the AAO agrees with the director's determination 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 demonstrate that the proposed training is not available in the Philippines, the beneficiary's home country. The AAO disagrees. 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 home country, and the regulation at 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.

On appeal, the petitioner submits an article from the website of the University of the Philippines, which states that carbide coating technology is not available in the Philippines. The AAO has examined this

article, as well as the website referenced by the petitioner, and takes note of an article stating the following:

Carbide coating is necessary to industries since it improves the quality and extends the lifetime of tools used in industrial processes such as cutting, engraving, and milling. However, this technology is not available in the Philippines, thus resulting in costly investments for coated tools.¹

The AAO accepts the petitioner's contention that the proposed training is unavailable in the Philippines, and withdraws that portion of the director's decision that states otherwise. The petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

The director also found that the petitioner had failed to establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

The petitioner states the following on appeal:

Education in the U.S. is amongst the highest ranked throughout the world . . . the top 25 universities in the world consist of 19 United States universities . . . [a]s education in the U.S. is currently recognized as a valuable asset around the world, he will be able to utilize his skills and knowledge in any related career outside of the U.S.²

The AAO notes first that the beneficiary is not coming to the United States in order to attend a university; stating that universities in the United States are highly regarded is not relevant.

Moreover, the petitioner has asserted, and submitted evidence to demonstrate, that the type of training to be imparted is unavailable in the Philippines. As the technology about which the beneficiary would learn is simply unavailable, the training would not benefit the beneficiary in pursuing a career there as, since the technology does not exist, there would be no job opportunities in which to work with the technology.

While the petitioner has stated that it is establishing a branch company in the Philippines, it has submitted no evidence to document its assertion. 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 such evidence, the petitioner has not established that the beneficiary will be able to utilize this training when he returns to the Philippines. Accordingly, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

The director also found that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program. The AAO agrees. The regulation at

¹ See <http://www.upd.edu.ph/~updinfo/juloct06/articles/coating.html> (accessed September 19, 2007).

² The AAO notes that this paragraph was also contained in the petitioner's response to the director's request for evidence. Thus, rather than responding to this portion of the director's denial, the petitioner opted to resubmit an assertion already contained in the record, and found deficient by the director, at the time she issued her decision.

8 C.F.R. § 214.2(h)(7)(ii)(B)(I) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

The director stated the following in her denial:

[After a] review of the training program and the instructional materials, [it] appears the beneficiary will be trained on the technical operations of a CNC lathe machine. The skills block checklist evaluation sheet appears [to] all be related to the CNC operations. There also appears to be no instructional materials or topics related to engineering management and operations, nor the entrepreneurial skills and knowledge that appear would be required in opening and managing a branch abroad.

* * *

The petitioner submitted a weekly schedule of training with unclear objectives. It did not have a fixed schedule . . . There is no indication in the proposed training of the amount of time that would be spent on each area of instruction . . . the schedule lacks detail about how the training would actually occur or what the structure of the training would be.

The petitioner offers no new information on appeal. It does not submit additional details regarding the activities that would occupy the beneficiary's time on a daily basis. Beyond stating that the beneficiary will be required to prepare notes, understand drawings, and review notations, no information was offered regarding what the beneficiary would actually be doing during the classroom component of the proposed training program that was not before the director when she issued her denial. Nor did the petitioner explain how the director's analysis was erroneous.

The AAO is left with little beyond generalized points as to what the beneficiary will actually be doing, on a day-to-day basis, during this time. While the petitioner is not required to account for every minute of the beneficiary's time, it must provide information as to how the beneficiary would actually be spending the bulk of his time. The AAO finds the petitioner's brief summary for a 65-week training program insufficient.

The AAO notes the presence of a "CNC training manual" in the record. The petitioner has not, however, indicated where this manual fits into the training program. The petitioner has not stated which component of the program would utilize this manual. The AAO also notes that this single manual would not occupy the beneficiary's time for the entire fifteen months, given the petitioner's assertion that most of the training program would consist of six daily hours of classroom instruction. Nor has the petitioner indicated, beyond providing the names of the persons under whom the beneficiary would train, how those individuals would fit into the program.

For all of these reasons, the AAO finds that the petitioner has failed to adequately describe the type of training and supervision to be given, and the structure of the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(I) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

The director also found that the petitioner had failed to adequately set forth the proportion of time that would be devoted to productive employment. The AAO disagrees. The regulation at

8 C.F.R. § 214.2(h)(7)(ii)(B)(2) requires the petitioner to set forth the proportion of time that will be devoted to productive employment.

Although the AAO finds the petitioner's description of its proposed training program lacking in detail, as detailed above, the petitioner has in fact set forth the proportion of time that would be devoted to productive employment. The AAO therefore withdraws that portion of the director's decision to the contrary, and finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(2).

The director also found that the petitioner had failed to describe the number of hours that would be spent, respectively, in classroom instruction and in on-the-job training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires the petitioner to show the number of hours that would be spent, respectively, in classroom instruction and in on-the-job training.

Again, although the AAO finds the petitioner's description of its proposed training program lacking in detail, as detailed above, the petitioner has in fact shown the number of hours that would be spent, respectively, in classroom instruction and in on-the-job training. The AAO therefore withdraws that portion of the director's decision to the contrary, and finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(3).

The director also found that the petitioner had failed to demonstrate that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. 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.

In analyzing the record under this criterion, the AAO incorporates its previous discussion regarding the petitioner's failure to adequately describe the structure of the proposed training program. The record contains little information, beyond generalized statements, as to what the beneficiary will actually be doing, on a day-to-day basis. The petitioner did not address the director's finding that the proposed training program deals in generalities. The petitioner has not overcome this ground for denial, and approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A).

Finally, the AAO turns to the director's finding that the petitioner failed to demonstrate that the beneficiary would not be placed in a position which is in the normal operation of business and in which citizens and resident workers are regularly employed. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires a demonstration that the beneficiary will not be placed in a position which is in the normal operation of business and in which citizens and resident workers are regularly employed.

Every employee—whether the beneficiary or a new employee who will be placed in the normal operation of business—participates in this training program. In its letter of support, the petitioner emphasized that it has had this training program since the company's establishment in 1943, and that it provides its employees with expertise in different areas of its establishment. That the beneficiary will take this training to the Philippines upon completion does not change the fact that he is receiving the same training as the petitioner's other employees. This training program is part of the petitioner's normal course of business, its American employees participate in the program, and by virtue of taking this course, which every employee takes, places the beneficiary in the petitioner's normal operation of business.

Approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

Finally, the AAO notes that, on appeal, the petitioner references previously approved H-3 petitions. However, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.2(b)(16)(ii). If the previous petitions were approved based upon the same evidence contained in this record, the approvals would have been erroneous. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, 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.