

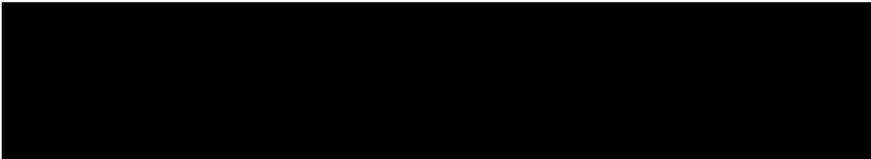
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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
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U.S. Citizenship  
and Immigration  
Services

D4



FILE: EAC 07 094 52222 Office: VERMONT 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:

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.

Handwritten signature of Robert P. Wiemann in black ink.

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 nonprofit educational research organization that seeks to employ the beneficiary as a study technology facilitator for a period of twelve 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 three grounds: (1) that the petitioner had failed to establish that it is not an academic or vocational institution; (2) that the petitioner had failed to establish why it is necessary for the alien to be trained in the United States; (3) that the petitioner had failed to explain the objectives or means of evaluation of the proposed training program; (4) that the petitioner had provided no discernible or concise description, beyond the job title, of the position for which the beneficiary would train; and (5) that the petitioner had made statements without corroboration that detracted from the credibility of the petition.

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)(1)(ii)(E)(1) states that "[a]n H-3 classification applies to an alien who is coming temporarily to the United States: (1) As a trainee, other than to receive graduate medical education or training, *or training provided primarily at or by an academic or vocational institution.*" (emphasis added).

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 its February 13, 2007 letter of support, the petitioner described itself as follows:

[The petitioner] was started in 1972 by a group of teachers who worked together to utilize (within the education system) the educational methods called "Study Technology" developed by L. Ron Hubbard. Using these tools the individual learns how to learn [and] how to overcome the common barriers or blocks to full comprehension.

From its beginnings more than three decades ago, [the petitioner's] staff and representatives have worked in partnership with government agencies, educators, schools, corporations, community groups[,] and parents in numerous countries.

Today, more than 150 [petitioner-]affiliated schools, tutoring centers[,] and community literacy centers bring hope to millions in 53 countries on six continents.

\* \* \*

[The petitioner] licenses several hundred tutoring and community mentoring programs around the world. Here youth and adults learn skills which they will use to learn throughout life.

\* \* \*

Nearly 100 private schools in Europe, England, and the United States use Study Technology through trademark licensing agreements with [the petitioner].

The petitioner described the goals of its program as follows:

Our goal for [the petitioner] is to provide an answer to the declining state of education and literacy internationally; to provide the educational tools, resources[,] and skills that enable and empower students to live more productive and successful lives.

The Study Technology will help build the human community where the requirements of social justice and fairness have been clearly translated into the eradication of poverty; the facilitation of employment and identification of jobs; and the equitable access to the basic resources for a decent life along with formal education accomplishments. These 3200 hours of study will definitely enhance the level of any acquired education.

The petitioner also submitted a brief course outline at the time of filing.

In its April 6, 2007 response to the director's request for additional evidence, the petitioner altered its training program. While the training program as described in the initial submission was to last twelve months, it was now to last two years. The petitioner stated that the training program was not available in the Philippines "due to [the] availability of training sites and local government intervention."

The petitioner also made the following statement:

More than 40% of the top CEO's, educators, University Presidents[,] and actors/actresses have been trained by us [the petitioner] with the "Study Technology."

The director denied the petition on May 21, 2007 stating, in part, the following:

The petition is deniable as a matter of law, because it is quite evident from materials submitted for the record from your online web site that the beneficiary is to receive his training at a well-established and substantial and/or vocational institution.

Additionally, the Service is not persuaded that it is necessary for the beneficiary to be trained in the United States. According to your own claims, there are "more than 150 [petitioner-]affiliated schools, tutoring centers and community literacy centers . . . in 53 countries on six continents." Surely these affiliates in education are qualified to train additional staff, themselves. Further, the Service finds the statement that the beneficiary cannot be trained in his home country because of "local government intervention" to be curious, vague[,] and undocumented.

The director also found that the petitioner had failed to explain the objectives of the proposed training or the means of evaluation. The director also stated that the record lacks a "discernable or concise description beyond the job title of the position for which the beneficiary would train."

Finally, the director stated the following with regard to the petitioner's claim that more than forty percent of the top CEO's, educators, university presidents, and actors and actresses had been trained by the petitioner:

Even though such claims are irrelevant to the petition, their gratuitous inclusion without corroboration detracts from the credibility of the petition as a whole.

In its June 12, 2007 memorandum submitted on appeal, the petitioner provided further information regarding the classroom schedule of the training program, which was to last two years, as was the case in its response to the director's request for additional evidence.

Upon review, 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.

As a preliminary matter, the AAO finds that the changes made to the proposed training program in response to the director's request for additional evidence did not merely clarify the initial submission or submit additional details to fill in missing information. Rather, they constituted a material alteration to the proposed training program as set forth initially. In the initial submission, the proposed training program was to last twelve months. However, the petitioner attempted to amend its petition to a twenty-four month program.

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Thus, the AAO will consider the petition under the evidence initially submitted.

The AAO next turns to the matters raised by the director in his denial. As noted previously, 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's first ground of denial was that the petitioner had failed to establish that it is not an academic or vocational institution. The regulations state that "[a]n H-3 classification applies to an alien who is coming temporarily to the United States: (1) As a trainee, other than to receive graduate medical education or training, *or training provided primarily at or by an academic or vocational institution.*" 8 C.F.R. § 214.2(h)(1)(ii)(E)(1) (emphasis added).

On appeal, the petitioner elected not to respond to this portion of the director's denial. The petitioner described itself on the Form I-129 as an educational research organization and provides academic instruction in a school-like setting. The promotional materials submitted on appeal refer to the petitioner's 100-acre campus; refer to its campus as the site of the first college of study technology; and contain the petitioner's course catalog. The evidence establishes that the petitioner is an academic or vocational institution. Because the petitioner is an academic or vocational institution, the beneficiary is not eligible for H-3 classification. Accordingly, the petitioner has not overcome this portion of the director's denial.

The director also found that the petitioner had failed to establish why it is necessary for the alien to be trained in the United States. The AAO agrees. 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, and 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.

The only information provided on appeal that addresses this issue is the following statement:

The training provided in the United States by [the petitioner] who has been at the center of the Study Technology, created by [REDACTED] cannot be matched anywhere else in the world.

However, the issue to be satisfied when addressing this criterion is not whether the proposed training is better in the United States than that available in the beneficiary's home country; it is whether that training is unavailable in the beneficiary's home country. Here, the petitioner was specifically placed on notice, via the director's notice of denial, that CIS would not accept its statement that the training was

unavailable in the Philippines due to the "availability of training sites and local government intervention." The director informed the petitioner that he found this statement to be curious, vague, and undocumented. On appeal, the petitioner did not respond to the director's statement. 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)).

Moreover, the petitioner has elected not to respond to the director's statement that, since the petitioner has stated that it has over 150 affiliated schools in 53 countries, those affiliates must be able to train additional staff themselves. The petitioner has offered no information to rebut or dispute this statement.

The petitioner has failed to offer any evidence on appeal to satisfy this criterion. It has not been established that this training is unavailable in the Philippines or that the training must be received in the United States. The petitioner has failed to overcome this ground of the director's denial, and has failed to satisfy the criteria at 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 explain the objectives or means of evaluation of the proposed training program. 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.

As noted above, the petitioner attempted to amend its proposed training program in its response to the director's request for evidence. The AAO will not consider those amendments, as they are attempts to materially alter a deficient petition rather than an effort at clarification. The proposed training program, as initially envisioned, would have lasted fifty-two weeks, and would have consisted of nine courses. No details were provided, beyond the titles of the courses, as to what the beneficiary would actually learn in any of these courses. No classroom materials were provided. The AAO is unable to determine what the beneficiary would actually be doing on a day-to-day basis, as the petitioner has provided a very generalized outline as to what the beneficiary would actually do. Approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the record fails to demonstrate the existence of a training program that does not deal in generalities.

The director also found that the petitioner that the petitioner had provided no discernible or concise description, beyond the job title, of the position for which the beneficiary would train. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

On appeal, the petitioner states the following:

Study Technology allows for the total comprehension of any subject by any student . . . Study Technology is employed throughout the world in teacher training and professional development, early childhood development and community literacy, as well as job readiness and workforce development. . . .

The purpose of this campus is the training and professional development of public and private school educators, to implement Study Technology in their schools and universities. In addition, programs are offered that are uniquely suited to corporate

trainers, tutors, and leaders involved in youth development and other community improvement activities.

However, such generalized assertions do not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(4). The petitioner has still not stated, with any degree of specificity, what the beneficiary will do with his training upon his return to the Philippines. He is not a public or private school educator, a corporate trainer, a tutor, or involved in youth development. Although the beneficiary is trained as a mechanical engineer, he has also worked as a pastor, a power plant operator, and, most recently, a sales representative. His resume indicates no employment since 2005. The petitioner has stated what others do, and have done, with this training, but it has not indicated the career for which the training will prepare the beneficiary. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(4).

The director also found that the petitioner had made statements without corroboration that detracted from the credibility of the petition. The AAO agrees. In its response to the director's request for additional evidence, the petitioner claimed that more than forty percent of the top CEO's, educators, university presidents, and actors and actresses had been trained by the petitioner. In his denial, the director found that this undocumented assertion detracted from the credibility of the entire petition. On appeal, the petitioner offers no information to document its assertion. Moreover, the AAO notes that the petitioner has made another undocumented assertion on appeal: it states that the record contains "many letters from universities and governments." However, the record does not contain these items. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The petitioner has not overcome this ground of denial.

Finally, the AAO notes that the petitioner submitted a copy of a previous H-3 approval notice. 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 petition was approved based upon the same evidence contained in this record, its approval was erroneous.<sup>1</sup> 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

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<sup>1</sup> The training program described in the initial filing and the training program described in response to the request for additional evidence are two separate programs. Although the record from the petitioner's approved petition for this beneficiary is not before the AAO, it is clear that both training programs contained in the instant record of proceeding cannot both be identical to the previous petition. If the initial training described in the current record is the same as that in the previously approved petition, the approval would have been erroneous.

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).

For all of these reasons, the AAO agrees with the director's decision that the proposed training program does not meet the regulatory requirements for approval of the nonimmigrant visa.

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.