

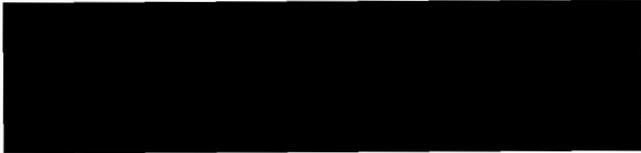
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FILE: WAC 07 249 52597 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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 an engineering services firm that seeks to employ the beneficiary as a trainee for a period of eighteen months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 set forth, with specificity, the type of training and supervision to be given, and the structure of the training program; (2) that the petitioner had failed to set forth the proportion of time to be devoted to productive employment; (3) that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; (4) that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training; and (5) that the petitioner had failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

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 its August 5, 2007 letter of support, the petitioner stated the following:

[The petitioner] is an engineering consulting firm based in La Puente, California. Founded in 1985, the company has provided nearly two decades of quality service to the engineering industry.

With regard to why it is offering the proposed training program, the petitioner stated the following:

Now that [the petitioner] is expanding its operations abroad particularly [to] the Philippines, the need to have highly skilled and trained manpower is essential. Because of our plans to establish branches abroad we have to ensure that they are going to be as equally successful as our operations here. Finding the right key people to fill significant positions in our satellite offices is a top priority, thus the training.

\* \* \*

This training would determine the success of all of our global expansion plans. At the end of the grueling eighteen months, we will decide on the best individual to fill [the] Strategic Business Development Officer position abroad [emphasis in original].

The petitioner explained that the beneficiary would spend 75% of his time in academic instruction, and 25% of his time in practical training. The proposed training program would consist of four modules. The first module, entitled "Fundamentals," would last three months. The second module, entitled "Business Planning & Strategies," would last six months. The third module, entitled "Managing Cash Flow," would last four months. The fourth module, entitled "Strategic Marketing," would last five months.

Upon review, the AAO agrees with the director's finding that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director also found that the petitioner had failed to set forth, with specificity, the type of training and supervision to be given, and the structure of the training program. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

Despite counsel's assertions to the contrary, the information contained in the record of proceeding remains vague in nature, and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis.

For example, the second module of the proposed training program would last six months. According to the training manual submitted at the time the petition was filed, this module would consist of three sections: (1) business planning basics; (2) Steps to Forming a Strategic Plan; and (3) Devising Business Strategies. While the petitioner provides some exercises, this portion of the training manual consists mainly of reading material. The petitioner does not explain how, or when, the beneficiary will utilize this information over the course of the six months. Again, the AAO has little idea of what the beneficiary would actually be doing on a day-to-day basis during this time. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, but the description provided is inadequate.

Nor does the "Official Incident Prevention Manual," referred to by counsel as "proposed training materials," satisfy the regulation. First, as was the case with the training manual, the petitioner does not link this material to any sort of schedule; it simply submitted the manual. Further, and again as with the training manual, this material consists of reading material; it does not provide any meaningful guide as to what the beneficiary would actually be doing on a day-to-day basis. Finally, the AAO notes that this booklet appears to be provided to every employee of the petitioner, whether participating in the training program or not, which renders it virtually useless as an aide in determining what the beneficiary would actually be doing on a daily basis over the course of the proposed training program.

The petitioner's description remains deficient; the record fails to provide the AAO with any meaningful description of what the beneficiary would actually be doing during the proposed training program.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. The petitioner's description of how the beneficiary would spend this period of time consists of summary outlines without specific descriptions of the daily training program.

The AAO finds this description deficient. Again, the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program.

Moreover, the petitioner has failed to adequately describe the supervision that the beneficiary would receive. In its letter of support, the petitioner stated, in pertinent part, the following:

The [proposed training program] is to be supervised personally by the President. She strongly believes that this will be one of the key[s] to the success of our global operations and the outcome of this training will dictate the feat [sic] of our company.

Due to the significance of the role of *Strategic Business Development Officer* in our current and future operations, the President himself [sic] is in-charge of full supervision [emphasis in original]. Since, she is the driving force in this business and she knows what is needed to succeed, she wants to keep close tabs on all trainees from beginning to end. . . .

Each session and/or module will be facilitated by trainers that specializes [sic] in that particular area. All of them are required to submit reports and recommendations to the President.

At the conclusion of each session or module, [the] trainee is required to meet with the President for a one-on-one comprehensive interview.

This description is inadequate, as the role of the petitioner's President in the proposed training program is unclear. The petitioner first states that the President will personally supervise the beneficiary, but then states that each session and module of program will be facilitated by trainers, who would submit reports and recommendations to the President, which indicates that the President would not actually be personally supervising the beneficiary during this time. 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).

For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

The director also found that the petitioner had failed to set forth the proportion of time to be devoted to productive employment. The AAO disagrees. Both counsel and the petitioner have asserted that the proposed training program will not involve productive employment. Given the goals and objectives of the training program as set forth in the record of proceeding, the AAO finds this assertion reasonable. Therefore, the AAO withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The AAO disagrees. The petitioner stated that the beneficiary would spend 75% of his time in classroom instruction, and 25% of his time in on-the-job training. The AAO finds no reason to doubt these figures and, accordingly, withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. The AAO disagrees. The petitioner indicates that the beneficiary will receive an allowance of \$400 per week. The petitioner has also described its plans for the beneficiary after he returns to the Philippines. While those plans may not have satisfied other regulatory criteria at issue in this case, they do satisfy C.F.R. § 214.2(h)(7)(ii)(B)(6), and the AAO withdraws that portion of the director's decision finding otherwise.

Finally, the director found that the petitioner had failed to establish that the proposed training program does not deal in generalities. 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.

The AAO here incorporates its previous discussion regarding the petitioner's vague and generalized description of its training program, as well as the uncertainty surrounding the supervision that will be provided. While the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program. It has failed to establish that its proposed training program does not deal in generalities. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A).

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.