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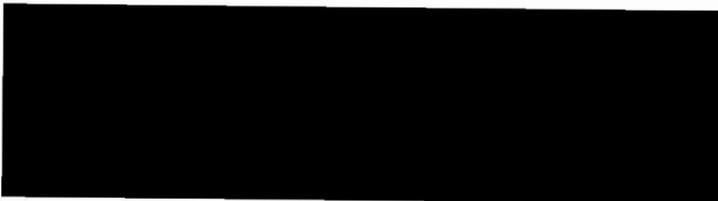


FILE: WAC 07 205 50387 Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 2008**

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 is a real estate lending company that seeks to employ the beneficiary as a trainee for a period of 18 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 the basis of her determination that the petitioner had failed to adequately describe the career abroad for which the training will prepare the beneficiary.

On appeal, newly-retained 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 June 21, 2007 letter of support, the petitioner stated the following:

[The petitioner] has been in the business of real estate lending since 1983. Our present wealth is attributed to the rise in real estate sales and purchases in southern California. The Los Angeles Times reported that the median price of a Los Angeles County home has topped the half-million dollar mark since last month. Four years ago, the median was half that. In March 2006, the median hit \$506,000, up 15% from a year earlier and 3% above the prior month, according to DataQuick Information Systems, a La Jolla-based research firm that analyzes property transactions. With low mortgage rates, real estate has become [a] hot market and is not likely to falter. As a result, our business has financially grown since our inception and will continue to grow in the years to come. . . .

The steady growth of the real estate market has been favorable to [the petitioner] due to the increased demand for our services, which has enabled our company to potentially broaden our business. Through research and planning, we have found that initiating a business in Asia – specifically, the Philippines – to be cost effective and profitable to our operations.

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

We . . . wish to place [the beneficiary] as a Loan and Finance Officer, after completing our training program, to plan, direct, and coordinate activities of designated [petitioner] projects in our Philippines branch office to ensure that goals or objectives are accomplished. We have a long established in house training program to provide our trainees with expertise in all areas of loan and finance management.

The petitioner explained that its proposed training program would consist of 20 hours of classroom instruction per week, and ten hours of on-the-job training per week. It would be divided into four modules: (1) Fundamentals of Lending; (2) Loan Processing; (3) Loan Career Building Skills; and (4) Microfinancing.

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 failed to adequately describe the career abroad for which the training will prepare the beneficiary. 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, and 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.

In her October 11, 2007 request for additional evidence, the director stated, in pertinent part, the following:

Explain further how the knowledge or skills acquired in the proposed training will benefit the beneficiary in pursuing a career outside the United States. Provide evidence to show that there is a (branch office in the Philippines) career abroad for which the training will prepare the beneficiary, to include photographs of business premises and relationship between foreign office and U.S. Company.

In its December 21, 2007 response to the director's request, the petitioner stated, in pertinent part, the following:

[The petitioner] conducted research for our business enterprise in the Philippines and discovered an adequate demand, coupled with low expenses that would be beneficial to our operations. We are looking into:

- Registering foreign investments for purposes of capital repatriation and profit remittances
- Securing a tax identification number
- Securing location clearance/business permit

In order to initiate business in the Philippines, [the petitioner] requires loyal, hardworking and effective officers that we can trust to be placed in the Philippines. . . .

The petitioner also submitted a letter that it had written to the beneficiary on December 19, 2007, informing her that the position of loan and finance officer for its upcoming office in the Philippines would remain open for her until she completes the proposed training program.

The director found the petitioner's submission insufficient, stating the following in her February 29, 2008 denial:

Subsequent to the filing of the petition, the petitioner was requested to . . . provide evidence establishing that there is a career abroad for which the training will prepare the beneficiary. In its response, the petitioner submitted a job offer letter dated December 19, 2007 [which] indicates only that the branch is upcoming and provides the terms and conditions of the beneficiary's pending position abroad upon completion of the proposed training. Review of the letter, however, indicates that it was authored and signed after the filing of the instant petition . . . USCIS cannot consider facts that have come into being only subsequent to the filing of a petition.

In addition, the petitioner provided no evidence of pending permits, contracts, business plans, foreign registry[,] or lease agreements showing that a branch office is being researched or [is] imminent in the Philippines. From the evidence, the petitioner is only hoping to expand into the Asian market by opening a branch office there. . . .

In view of the above, the petitioner has failed to establish that the knowledge and skill gained through the training would be used outside the United States.

In his April 18, 2008 appellate brief, newly-retained counsel asserts the following:

From a cursory perusal of the petitioner's letter dated June 21, 2007 it is very clear that there already exists a basic understanding between the petitioner and the beneficiary that the latter shall be employed as a Loan and Finance Officer in the Philippines after completion of the training program. . . .

Unfortunately, the Immigration Officer on [the] case sees its differently because the petitioner submitted in evidence the job offer letter dated December 19, 2007 containing

the formal offer of employment conditioned upon the successful completion of the training. The immigration officer took a myopic look into this piece of document and concluded that this is a fact that came only subsequent to the filing of the petition.

With all due respect, the fact of the job offer conditioned upon the successful training of the beneficiary existed even prior to the filing of the petition [underlining in original]. In fact, it is the operative agreement that set into motion of filing of the I-129 Petition. Without such prior agreement, there would be no training program to speak of in the first place. . . .

* * *

The petitioner is very clear that the alien beneficiary shall be trained and after her successful training program, she will be assigned in the planned expansion program of the company. The intention of the petitioner is very clear – to train the alien beneficiary, and after a successful training program, when the alien beneficiary has proven herself qualified and fit into the positioned [sic] earmarked for her, then that will be the time when the petitioner will push through with the planned expansion and the alien will be hired to work in the Philippines.

This is a business decision and was brought about by the petitioner. It is very logical and wise. It is prospective and contingent, and there is nothing in the law that prohibits the same. . . .

The AAO agrees with the director's analysis. Again, the reason for creation of the training program at issue here is to train the beneficiary on the petitioner's own business practices. Having made such a demonstration, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiary will be able to use her newfound knowledge. Since her newfound knowledge will be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge.

The petitioner's intentions are not the issue; the issue is whether there existed, at the time the petition was filed, a career abroad in which the beneficiary would utilize the training she obtains through the proposed training program. Since the knowledge gained via participation in the training program would be specific to the petitioner, and an operation run by the petitioner would be the only setting in which she would be able to use the knowledge, and the petitioner did not have any business operations in the Philippines at the time the petition was filed, it has not demonstrated that such a position existed at the time the petition was filed. Nor has it demonstrated that such a position exists at the present time.

There is no evidence in the record of proceeding to indicate that the petitioner had any concrete plans for expansion into the Philippines at the time the petition was filed. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Accordingly, the petitioner has not established that the proposed training would prepare the beneficiary in pursuing a career abroad.¹ The petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4).

Pursuant to the above discussion, 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.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason.

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. Much of the information submitted by the petitioner is 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 "Training Schedule By Week" submitted by the petitioner in response to the director's request for additional evidence indicates that the first module of the proposed training program, entitled "Microfinancing," would last 24 weeks. However, the petitioner's description of what the beneficiary would actually be doing during this time consists of twelve session titles, with no information regarding what those sessions would actually entail. The petitioner does not indicate how the classroom and on-the-job training components of the proposed training program work together. There is no indication, beyond the summary session titles, of what the beneficiary would actually be doing during this time. The remainder of the petitioner's description of its proposed training program suffers similar deficiencies.

The AAO finds this description deficient. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program. However, this description is inadequate. The petitioner has failed to provide a meaningful description of what the beneficiary would actually be doing, on a day-to-day basis, during most of the proposed training program. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of this petition. For this additional reason, the petition may not be approved.

For all of these reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,*

¹ The AAO notes the petitioner's assertion in its December 21, 2007 response to the director's request for additional evidence that even if the beneficiary does not accept employment with the petitioner in the Philippines after completing the proposed training program she will be able to utilize her newfound skills in "any career outside the United States." In making this assertion, the petitioner is in essence asserting that the skills to be imparted by the proposed training program go beyond those that are specific to the petitioner's company. If the AAO were to accept this argument, which it does not, the AAO would be compelled to enter a finding that the petitioner had failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and (5). The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to demonstrate that the proposed training is not available in the alien's own country, and 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. If the petitioner is now asserting that the skills and knowledge that the beneficiary would learn during the proposed training program are not specific to the petitioner, and could be used at other companies, the AAO questions why the beneficiary cannot obtain such skills in the Philippines.

229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.