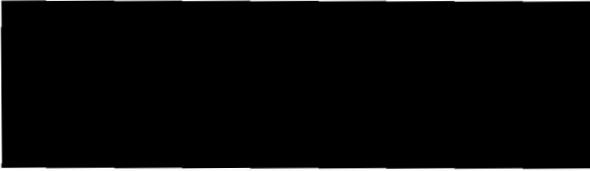




U.S. Citizenship
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Services

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FILE: EAC 08 045 52207 Office: VERMONT SERVICE CENTER Date: DEC 12 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)

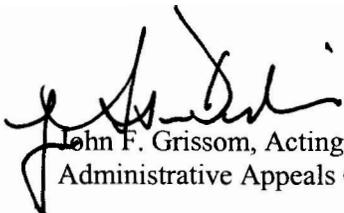
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 restaurant chain that seeks to employ the beneficiaries as sushi food manufacturing, sales, and distribution trainees for a period of 24 months. The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker trainees 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 two grounds: (1) that the petitioner had failed to demonstrate that the proposed training will benefit the beneficiaries in pursuing a career outside the United States; and (2) that the petitioner had failed to demonstrate that similar training is unavailable in the Philippines, the beneficiaries' home country.

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)(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 response to the director's request for additional evidence, the petitioner stated the following:

We are a food service company operating a sushi manufacturing and commissary facility and seven full-service Asian restaurants under the brands [names withheld]. The nature of our business is the large-scale manufacturing, sales[,] and distribution of sushi food. We currently employ more than 200 individuals and in 2007 our gross sales exceed[ed] \$12 million with a margin of over 10% net.

With regard to its objective in offering the training program, the petitioner stated the following in the program submitted in response to the director's request for additional evidence:

[The petitioner] established its Sushi Food Manufacturing, Sales & Distribution Training Program in 2005 to provide trainees from its overseas supplier food service companies with expertise in the fast-growing area of sushi food manufacturing, sales[,] and distribution. [The petitioner] believes that as various countries in Southeast Asia continue to rapidly develop, there will be an overwhelming market demand for high-quality, fresh sushi products, as has been experienced in North America. The long-term goal is to open sushi production facilities in China and the Philippines, and eventually in Thailand, Singapore[,] and Taiwan. By offering this training program, [the petitioner] hopes to lay the foundation for its overseas expansion by developing skilled international workers in these countries for a potential overseas business pool. The program is designed to provide trainees with the skills and knowledge to develop parallel manufacturing facilities and fulfill managerial roles for those operations.

The petitioner submitted a detailed outline of its proposed training program in response to the director's request for additional evidence.

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 found that the petitioner had failed to establish that the beneficiaries will use the training for employment abroad. The AAO disagrees. 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 beneficiaries 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 aliens.

In his November 29, 2007 letter of support, counsel stated that the proposed training program would prepare the beneficiaries for careers as international restaurant operations managers. In its response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] Human Resources Manager of the ZEN Japanese Bar and Restaurant in Manila. [REDACTED] stated the following:

We are very interested in enhancing our business by implementing the large-scale production, sales[,] and distribution of sushi food.

In order to accomplish [our] expansion's goal, we would like to hire well trained Operations Managers with skills in the sushi food manufacturing, sales and distribution; however, there is no training program available for that, which includes theoretical and practical training here in Manila, Philippines. . . .

* * *

Once [the beneficiaries] finish the Training Program we would like to hire them as Operational Managers in our growing business.

The AAO finds the assertions of the petitioner and [REDACTED] reasonable, and withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiaries' home country. 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.

In his November 29, 2007 letter of support, counsel offered the following reasons why the proposed training is unavailable in the United States: (1) that the proposed training program is unique in its combination of theoretical and on-the-job training; (2) that the proposed training offers the intellectual asset of the petitioner's manpower, knowledge, and experience; (3) that the petitioner is located in the United States; and (4) that the petitioner's know-how in large-scale manufacturing, sales, and distribution of sushi food is unique. The petitioner repeated counsel's assertions, nearly verbatim, in its response to the director's request for additional evidence.

The AAO does not find the assertions of counsel and the petitioner persuasive, as there is no documentary evidence in the record beyond those assertions, to establish that similar training is in fact unavailable in the Philippines. For example, there is no evidence regarding the current

existence of sushi restaurants in the Philippines. If sushi restaurants do exist in that country, then it is unclear to the AAO how their employees were trained and, similarly, how the distributors that supply their sushi trained their employees, if such training is unavailable there. 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 documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has failed to overcome the director's concerns regarding this issue, and counsel elects not to address this ground of the director's denial in his June 16, 2008 letter in support of the appeal.

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.