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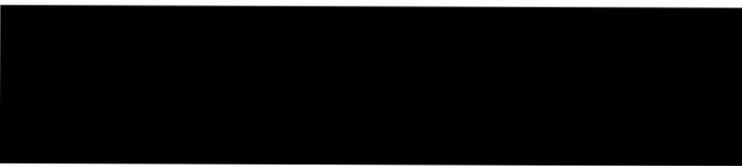


FILE: WAC 07 212 52481 Office: CALIFORNIA SERVICE CENTER Date: DEC 12 2008

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 textile and fabric importer that seeks to employ the beneficiary as an trainee for a period of 18 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 two grounds: (1) that the petitioner had failed to demonstrate that similar training is unavailable in the Philippines, the beneficiary's home country; and (2) that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the proposed training.

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 June 28, 2007 letter of support, the petitioner stated the following:

[The petitioner] is one of the largest textile firms in imported and domestic knits and woven fabrications. We are a premier supplier of a large variety of fabrics in synthetic, polyester, micro, nylon, rayon, acetate, acrylic, cotton, and many more, with and without spandex. Through unlimited contacts with direct mills overseas and domestic knitting, woven, dyeing,

printing and finishing plants, we have created a “one stop” source for servicing and developing all of our customer’s necessities. . . .

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

The intent of our training is to provide the trainee a platform for actual application of procedures as set by the US government when it comes to import requirements. . . .

It is the intent of the company to explore the possibility of setting up a similar entity in the Philippines.

The petitioner explained that its proposed training program would last 18 months. The beneficiary would spend 20 hours per week in classroom instruction and 15 hours per week in on-the-job, supervised training. According to the training manual submitted on appeal, the beneficiary would spend two weeks on an overview of the training program; four weeks on orientation; 12 weeks on “Management and Operations”; eight weeks on “Sales and Marketing”; four weeks on “Accounting and Budgeting”; 24 weeks on “Logistics with Focus on Import Processes and Guidelines”; and two weeks on review and evaluation.

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 proposed training is unavailable in the Philippines, the beneficiary’s 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 her August 29, 2007 request for additional evidence, the director requested additional evidence in order to satisfy this criterion. In response, the petitioner submitted a letter from [REDACTED], Managing Director of Creative Minds Consultancy, the beneficiary’s current employer in the Philippines, from which she is currently on extended leave to pursue training in the United States, as well as a report written by [REDACTED]

Both the letter and the report spoke to the unavailability of similar training in the Philippines.

In her February 19, 2008 denial, the director stated the following:

The authors of the letters are not experts in the field and they are insufficient to prove that the beneficiary’s home country cannot offer this specific type of training . . . No evidence has been presented that such training does not exist in the beneficiary’s home country. The petitioner has not demonstrated why it is necessary for the beneficiary to receive training in the United States.

In her March 19, 2008 appellate brief, counsel states the following:

The petitioner is one of the largest textile firms in imported and domestic knits and woven fabrications. The intent of the training is to provide the trainee a platform for actual application of procedures as set by the US government when it comes to import requirements. Skills upgrading is a necessary strategy for productivity improvement and eventually for securing employment. We therefore designed our training to provide the

trainee with hands-on programs to hone the trainee's import documentation skills, a training that is not available in her home country.

Counsel resubmits [REDACTED] report, but does not directly address the director's concerns regarding qualifications to opine on the availability of this type of training. Rather, counsel submits a document which states that [REDACTED] was an editorial assistant for a newspaper in the Philippines for six years, followed by 11 years as a producer of a magazine show for a television station in the Philippines. She was then editor-in-chief of several small newspapers, and since 2006 has been editor-in-chief of the Philippines Nurses Monitor, which, according to the document, is "the only US publication of its kind that deals with issues and concerns facing Philippine nurses." Her background in the petitioner's specific industry, however, has not been demonstrated. Her ability to opine on the matter of whether similar training is unavailable in the Philippines has, therefore, not been established. Thus, the petitioner has not established the reliability and accuracy of any of [REDACTED] pronouncements, and these submissions are therefore not probative of any of the criteria at issue here. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Nor is the printout from the website from the International Labour Organization (ILO) dispositive. First, the AAO notes that the passage highlighted by counsel does not stand for the proposition cited by counsel. While counsel does quote the passage correctly, the particular sentence she cites pertains to the implementation mechanisms of particular laws, such as the Omnibus Investments Code and the Special Economic Zone Act. The paragraph that follows her highlighted passage discusses another law, the Technical Education and Skills Development Act (TESDA). That paragraph states the following:

[TESDA] is the primary legal instrument for technical and vocational training. As such, its role in industrialization cannot be overemphasized . . . To keep abreast of the competition, the Philippines should be expanding its position in the garment value-added chain and redirecting its garments and textiles production to higher value-added outputs. The manpower development interventions needed to support this redirection lies primarily with TESDA.

The ILO printout does not state that the implementation mechanisms of TESDA were never implemented. Rather, given the importance afforded TESDA by the author of the ILO printout, it would appear that its implementation mechanisms were implemented. The AAO, therefore, disagrees with counsel's analysis.

Further, even if the AAO were to accept counsel's interpretation of the ILO printout, the AAO notes that it was written nearly a decade ago. The petitioner has failed to establish that the proposed training is not available in the Philippines, and finds that the petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).¹

¹ Moreover, the AAO notes the existence of import-export companies in the Philippines. For example, according to its website, <http://www.lgatkimson.com>, L.G. Atkinson Import-Export, Inc. is an importer, exporter, and wholesaler located in Quezon City. It is unclear how the individuals working at this company obtained their knowledge, if such knowledge cannot be acquired in the Philippines. Moreover, the AAO notes that the De La Salle – College of Saint Benilde's School of Management and Information Technology (SMIT) offers a bachelor's degree in business administration with a major in export management (BSBA-EM). According the SMIT's brochure, this course of study is for those who "wish to start [their] own export business." According to the SMIT, "[t]raining includes exposure to the dynamic relationship of

The director also found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees.

In her February 19, 2008 denial, the director stated the following:

[T]here are no regular training facilities or personnel involved in training . . . The petitioner has not established that it has the physical space, training staff, and materials for providing the specified training.

Counsel states the following on appeal:

The company has sufficient physical premises occupying 2 floors housing its offices, show rooms[,] and training room. . . .

The training will be provided by _____ Corporate Secretary and co-proprietor of [the petitioner]. [sic] has an extensive experience in the textile business having been with this company since its inception in 1997. . . .

The AAO accepts the petitioner's assertions regarding its physical plant, and notes that the petitioner has supported these assertions with documentary evidence on appeal. The AAO, therefore, withdraws that portion of the director's denial of the petition under 8 C.F.R. § 214.2(h)(7)(iii)(G).

However, the AAO agrees with the director's determination that the petitioner has failed to establish that the petitioner has sufficiently trained manpower to provide the training specified in the petition. The petitioner has failed to establish how, if _____ is to provide 20 hours of classroom instruction and 15 hours of supervised on-the-training per week for a period of 18 months, his regular duties will be performed. The petitioner has failed to satisfy it has the manpower to provide the training. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

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 three additional reasons.

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. First, the AAO incorporates here its previous discussion regarding the deficiency of the petitioner's description of the supervision that the beneficiary will receive. Moreover, the information contained in the record of proceeding 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. The reading material contained in the training manual submitted on appeal is not linked to the beneficiary's daily routine in any meaningful way, and it is unclear how the petitioner would stretch this material to cover 18 months of training. Lists of goals and objectives are not substitutes for descriptions of

economics and trade, international market research, international marketing, product management, product design and development[,] and financial management." See http://www.dls-csb.edu.ph/content/docs/pdf/smit_brochure.pdf (accessed November 24, 2008).

how those goals and objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing on a day-to-day basis. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, 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. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). For this additional reason, the petition may not be approved.

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 incorporates here its previous discussion regarding the petitioner's vague and generalized description of its training program. While the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, 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. Nor does it appear as though the program has a fixed schedule: the "estimated time" calendar provided on appeal only covers 56 weeks of training. However, the petitioner states that the training program will last 18 months. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). For this additional reason, the petition may not be approved.

Finally, the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The record contains evidence that the beneficiary was twice granted H-3 classification so that she could participate in a training program offered by ██████████ between June 26, 2006 and February 25, 2007, and from February 26, 2007 through June 30, 2007. The record, however, contains no evidence regarding her activities during this time. Without such evidence, the AAO will not enter a finding that the beneficiary lacks substantial training and expertise in the proposed field of training. A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masuyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965). 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*, 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.