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FILE: WAC 07 800 07791 Office: CALIFORNIA SERVICE CENTER Date: **JAN 25 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 a thoroughbred horse racing stable that seeks to employ the beneficiary as a trainee in its international equine management (IEM) training program for a period of twenty-four 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 denial letter; and (3) 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 establish that its proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

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 April 3, 2007 letter of support, the petitioner stated the following:

The IEM training program at [the petitioner] is part of our response to the extremely competitive and increasingly international scope of the thoroughbred industry. In keeping with the goal of [the petitioner] to maintain the highest standards of operation not only in the U.S. but also in our expanding international operations, the IEM Training Program has been established to bring qualified individuals from abroad to the U.S. to undertake two years of comprehensive training, covering each major area of training operations, in order to then continue their employment with [the petitioner] in their home countries . . .

With regard to why it offers this program, the petitioner stated the following:

The IEM Training Program is intended to provide a trainee with a thorough knowledge of and experience with the particular standards and practices employed by [the petitioner] in such areas as: Facilities Layout and Land Management/Maintenance; Thoroughbred Training and Sales Preparation; Bloodstock/Pedigree Determination; Weanling and Yearling Care and Nutrition; Racing; Sales/Contracts; and Office/Personnel Management and Public Relations. Upon completion of the IEM Training Program, the trainee is expected to be fully qualified to manage and/or expand [the petitioner's] international operations in the trainee's home country, assuring that the standards established by [the petitioner] relating to such areas as veterinary care, nutrition, medicine, exercise, training, transport and contracts are not compromised and are consistent with the standards and practices of our U.S. operations. The IEM Trainee will also be expected to be capable in reviewing and communicating with our U.S. office on critical issues relating to bloodstock purchases and contracts, providing efficient and effective communication with potential clients or agents in their home country regarding [the petitioner's] bloodstock and/or other thoroughbred-related services.

The petitioner submitted extensive documentation regarding its proposed training program, which collectively documented the existence of a well-structured program. The director did not question the substance of the petitioner's proposed training program. Rather, she questioned the qualifications of the beneficiary. Citing to *Matter of Miyazaki Travel Agency, Inc.*, 10 I&N Dec. 644 (Reg. Comm. 1964); *Matter of Masuyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); and *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965) for support, the director stated the following in her June 26, 2007 denial:

The record indicates that the beneficiary has been employed in the horse industry for the past eight years at various facilities. The petitioner indicates that the beneficiary[']s eight years [of] equine related experience is considered preparatory and complementary but not equivalent to [the proposed training]. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training.

The director also noted that the petitioner previously held J-1 status, sponsored by the petitioner, in order to receive practical training in equine studies, equine management, and equine health.

Accordingly, the director found that the petitioner had failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(C), which 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.

On appeal, counsel states that the precedent decisions cited by the director were decided over a generation ago and that the situations described in those cases are not applicable to the type of complex international training involved in the instant petition. Counsel states that, while the beneficiary has over nine years of experience working with horses and of being trained as a handler, the training proposed in this petition is much more detailed and deals with facilities layout; land management and maintenance; thoroughbred training and sales preparation; bloodstock/pedigree determination; weanling and yearling care and nutrition; racing; sales/contracts; and office/personnel management and public relations.

Counsel also states that the beneficiary has much to learn and experience in order to gain the skills necessary for becoming a successful horse trainer, and emphasizes the complex nature of the petitioner's business.

The AAO disagrees with counsel's analysis. The AAO does not dispute (nor did the director) the complex nature of the petitioner's business or its proposed training program. As noted previously, the director did not question the substance of the petitioner's proposed training program. The sole basis of the director's denial was her determination that, absent a detailed description of the beneficiary's employment history, CIS was unable to determine whether or not the beneficiary already possesses substantial training and expertise in the proposed field of training.

The director clearly placed the petitioner on notice that she was desirous of a detailed description of the beneficiary's employment history. Absent such information, she was unable to compare the beneficiary's previous employment to the training she would receive in the proposed training program. On appeal, the petitioner has elected not to provide such a detailed description of her previous experience. Without this information, the AAO is unable to distinguish the beneficiary's previous work experience from the training to be imparted through the proposed training program.

Accordingly, the record still fails to demonstrate that the proposed training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of the petition.

The AAO, therefore, 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 petition may not be approved, and 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.