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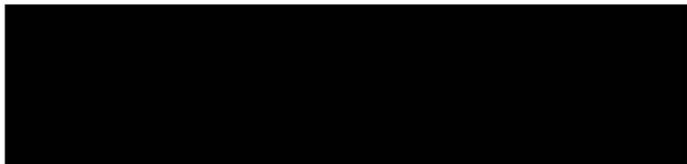


FILE: WAC 07 222 52419 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2008

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.

for *Michael T. Kelly*
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 travel agency that seeks to employ the beneficiary as a travel agency operation trainee for a period of twelve 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 six grounds: (1) that the petitioner had failed to establish that the proposed training is unavailable in the beneficiary's home country; (2) 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; (3) that the petitioner had failed to describe the type of supervision to be given; (4) that the petitioner had failed to set forth the proportion of time that will be devoted to productive employment; (5) 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; and (6) that the petitioner had failed to indicate the source of any remuneration received by the trainee and the benefit which will accrue to the petitioner for providing the training.

On appeal, counsel contends that the director erred in denying the petition. Specifically, counsel states that "we have met the requirements of the facts, yet the government looks at the facts in the face and misconstrues them."

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

- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

In its June 26, 2007 letter of support, the petitioner stated that it wished to train the beneficiary to be its "future Hong Kong contact and representative." The petitioner stated that its proposed training program would last twelve months and consist of four 90-day parts: (1) ticket sales and tour package sales; (2) the international exchange system; (3) the general operation of the petitioner's business; and (4) accounting.

In her August 1, 2007 request for additional evidence, the director requested, among other items, a more detailed description of the proposed training program. Specifically, the director requested copies of lesson plans and course materials that describe, in detail, the type of training to be provided, the proposed training program's structure, the dates of scheduled classes, course objectives, and supervision to be provided.

In its October 24, 2007 response to the director's request for additional evidence, the petitioner altered the structure of the proposed training program. The length of the individual components was changed, as was their order. A fifth component was added. The amended order of the petitioner's training program was amended as follows: (1) general operation of business (from third); (2) travel ticket and tour package sales (from first); (3) international exchange system (from second); (4) accounting (this component remained fourth); and (5) final report (this was a new component).

The length of the "general operation of business" component of the proposed training program was to remain three months. However, the length of the "travel ticket and tour package sales" component of the proposed training program was extended from three months to five months; the "international exchange system" component of the proposed training program was shortened from three months to one month; the "accounting" component of the proposed training program was shortened from three months to two months; and the final report component, which did not exist originally, was now to occupy one month of the beneficiary's time.

During the "general operation of business" component of the proposed training program, the beneficiary would become familiar with the petitioner's beliefs and policies; become familiar with the petitioner's destinations, entertainment programs, and transportation; learn how to handle customer feedback; and receive training on how to "deal with" airlines, hotels, and land operators.

During the "travel ticket and tour package sales" component of the proposed training program, which was extended from three months to five months, the beneficiary would receive extensive training on the petitioner's reservation systems; and receive training on planning, group rooming and blocking, and preparing itineraries.

During the "international exchange system" component of the proposed training program, which was shortened from three months to one month, the beneficiary would learn how to "use resources to do the international exchange rate conversion."

During the accounting component of the proposed training program, which was shortened from three months to two months, the beneficiary would receive training on the petitioner's accounting system.

The petitioner also stated that ten months of the proposed training program would be "set up in the form of lectures and on-site observations which includes reading assignments, discussing reference materials,

lecture exercises provided by supervisors, evaluation report on lectured topics, and a final report and task on lectured topics.” The petitioner also stated that one to two months of the proposed training program would consist of on-the-job training.

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 could not be obtained in the the beneficiary’s home country. The AAO disagrees. 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.

The AAO notes that the question to be addressed when attempting to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5) is not whether the petitioner offers the proposed training in the alien’s home country. Whether the petitioner itself offers similar training in the beneficiary’s home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiary’s home country, irrespective of whether it would be provided by the petitioner or another entity.

However, in the present case, the primary reason for creation of the training program is to train the beneficiary on the petitioner’s particular business practices. The petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another travel agency. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in Hong Kong, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Accordingly, the AAO withdraws that portion of the director’s decision stating the contrary.

The director also found 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. 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.

In her denial, the director stated the following:

The petitioner did submit a three page general training program outline, but this program outline dealt in generalities and did not break down the training in the amount of hours that will be provided to each section of training. . .

On appeal, counsel states that the director is requiring evidence that is

above and beyond would normally H-3 programs are required to do [sic]. Specifically, the petitioner has broken down the time spent on each program to be in denominations of months. No law exist that requires a petitioner to specific how many hours are necessary

for each training as each individual trainee is different [sic].¹ To require a denomination of hourly break down is unrealistic as well as beyond the call of H-3 programs anyway.

The AAO agrees with the director's analysis that the petitioner has failed to establish that the proposed training program does not deal in generalities with no fixed schedule or objectives. Despite counsel's assertions to the contrary, 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 "travel ticket and tour package sales" component of the proposed training program would last five months. However, the petitioner's description of how the beneficiary would spend this five-month period of time consists of a six-sentence summary. The petitioner states that, during this time, the beneficiary would receive an extensive training on its reservation systems; receive training on planning, group rooming and blocking, preparing itineraries, and informing customers of their travel plans; attend lectures in the petitioner's wholesale, retail, and corporate reservation and operations departments; learn how to book a tour package; and receive a month of on-the-job training, as the beneficiary would "really need practice." Such a vague, generalized description does not explain what the beneficiary would actually be doing on a day-to-day basis. While it is true that the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, the description provided is inadequate.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. The "general operation of business" component of the proposed training program would last three months. The petitioner's description of how the beneficiary would spend this period of time is presented in summary form. The petitioner states that the beneficiary is to learn the petitioner's beliefs and policies, but does not indicate how this would occur, or how much of the three-month period of time would be devoted to this learning. The petitioner states that the beneficiary would learn about the different "destination sightseeing spots," but does not indicate how this learning would occur, or how long it would take. The petitioner states that the beneficiary would learn how to handle customer feedback but, again, does not include information about how the beneficiary would acquire such skills, or how long such acquisition would take.

The "international exchange system" component of the proposed training program would last for one month. Again, the petitioner's description of how the beneficiary would spend this period of time is presented in summary form: its entire description is three sentences long. Other than stating that the beneficiary would learn "to do international exchange rate conversion" in the manager's office using an internet site, the AAO is left with little idea of what the beneficiary would actually be doing on a day-to-day basis during this time.

The accounting component of the proposed training program would last for two months. Again, the AAO is left with little idea of what the beneficiary would actually be doing on a day-to-day basis during this time, other than "being lectured in the accounting manager's office" on reporting income and expenses, and learning when and how to report foreign income and expenses.²

¹ The AAO finds counsel's statement that "each individual trainee is different" unconvincing, as this petition is on behalf of a single beneficiary. The petitioner has knowledge of the beneficiary's particular educational and work background.

² Additionally, it is unclear to the AAO how, if the beneficiary is to be lectured in the accounting manager's office every day for two months, the accounting manager's normal work tasks will be performed.

The petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiaries 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 has the petitioner provided any of the proposed training program's course materials or lesson plans,³ despite being specifically requested by the director.⁴

Finally, the AAO notes the changes made to the proposed training program by the petitioner in response to the director's request for additional evidence. As noted previously, the length of the "travel ticket and tour package sales" component of the proposed training program was extended from three months to five months; the "international exchange system" component of the proposed training program was shortened from three months to one month; the "accounting" component of the proposed training program was shortened from three months to two months; and the final report component, which did not exist originally, was now to occupy one month of the beneficiary's time. Such changes are not indicative of a training program with a fixed schedule. The AAO also notes that, according to the October 24, 2007 response to the director's request for additional evidence, the beneficiary would spend "one to two months" in productive employment. Such uncertainty is not indicative of a training program with a fixed schedule.

The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A).

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

In her denial, the director stated that the petitioner's outline of the proposed training program failed to indicate how much time would be spent with each supervisor conducting the training.

The AAO agrees with the director, and finds the petitioner's explanation of the supervision to be provided deficient. The petitioner provided the names of six supervisors who were to provide the training. However, the petitioner failed to explain the supervisors' particular roles in the proposed training program. For example, the "travel ticket and tour package sales" component of the proposed training would last five months. The petitioner provides the names of four people who will train the beneficiary during this time, and their titles. However, the petitioner makes no further effort to explain what these trainers would actually be doing or explain the relationship they would have with the beneficiary during this time. The record fails to indicate the areas in which they would be training the beneficiary.

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 that will be devoted to productive employment. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(2) requires the petitioner to set forth the proportion of time that will be devoted to productive employment.

³ It was not unreasonable for the director to request copies of lesson plans: if the beneficiary is to spend ten months attending daily lectures at the petitioner's place of business, it was not unreasonable for the director to assume that at least some of those lectures would already be planned.

⁴ The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The AAO incorporates here its previous discussion regarding the vague and generalized description of the training program contained in the record, particularly the petitioner's statement that the beneficiary would spend "one to two months" in productive employment. The AAO finds the petitioner's statement in this regard deficient; without a more specific explanation of the proportion of time to be devoted to productive employment, the AAO is unable to enter a finding that the petitioner has in fact complied with this regulation. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(2).

The director also found that the petitioner had failed to set forth the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires a statement from the petitioner that shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

The AAO again incorporates here its previous discussion regarding the vague and generalized description of the training program contained in the record, as well as the petitioner's statement that the beneficiary would spend "one to two months" in productive employment. Without additional information regarding what the beneficiary will actually be doing while participating in the proposed training program, the AAO is again unable to enter a finding that the petitioner has in fact complied with this regulation. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(3).

Finally, the director found that the petitioner had failed to indicate the source of any remuneration received by the trainee and the benefit which will accrue to the petitioner for providing the training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires the petitioner to indicate the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

The petitioner has explained that the beneficiary will work for the petitioner in Hong Kong after completion of the training program, and that the beneficiary will be compensated for participating in the training program at the rate of \$2,000 per month. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(6), and the AAO withdraws the director's finding to the contrary.

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. The AAO notes that although the petitioner was notified of the director's grounds of denial in her November 5, 2007 decision, the petitioner elected not to provide additional evidence on appeal, but rather submitted evidence already in the record for the AAO's review.

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

The regulation at 8 C.F.R. § 214.2(h)(7)(2)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States. As noted above, 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 his newfound knowledge. Since his newfound knowledge will be specific to the petitioner, an operation run by the petitioner would be the only setting in which he would be able to use the knowledge.

The petitioner has asserted that, upon completion of the training program, the beneficiary will "hire him [the beneficiary] outside of the United States after the training program for their new branch office in

Hong Kong.” 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). In this particular case, since the proposed training is specific to the petitioner, the only setting in which the beneficiary would utilize his skills would be for the petitioner in Hong Kong. However, the petitioner has not documented that it actually has plans to commence operations in Hong Kong upon completion of the training. The record, as presently constituted, contains no information or evidence regarding the petitioner’s expansion plans in Hong Kong, beyond training the beneficiary. 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)). Therefore, the petitioner has not established that the proposed training will benefit the beneficiary in pursuing a career outside the United States. It has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4). For this additional reason, the petition may not be approved.

Finally, the AAO notes that the beneficiary is currently in F-1 nonimmigrant status. He was granted a one-year period of optional practical training, which was to last from July 31, 2006 until July 26, 2007. The instant petition was filed on July 23, 2007, and requested that the beneficiary’s F-1 status, upon which basis he was granted the period of optional practical training, be changed to that of H-3. If approved, there would be no gap between the beneficiary’s period of optional practical training and her H-3 status. Approval of this petition would, therefore, extend the period of time in the United States for the beneficiary to receive practical training.

However, the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(H) precludes approval of a petition which is designed to extend the total allowable period of practical training previously authorized the beneficiary. Thus, approval of this petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(H). 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.