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FILE: EAC 07 006 52828 Office: VERMONT SERVICE CENTER Date: JUN 09 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 Robert P. Wiemann*  
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 health and beauty product sales company that seeks to employ the beneficiary as a human resources management and recruitment trainee for a period of nineteen 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 four grounds: (1) that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the proposed training; (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 establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States; and (4) that the petitioner had failed to demonstrate that its proposed training program was not on behalf of a beneficiary who already possesses substantial training and expertise in the field

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 August 15, 2006 letter of support, the petitioner stated the following:

[The petitioner] is a corporation established in 1998 and is primarily engaged in the business of developing, manufacturing, sourcing, and marketing health and beauty products. . . .

\* \* \*

To promote the Company's vision of growth, the Company aims to carry on its successful business in the Philippines. The Company intends to put up an affiliate company in Manila, one of the major cities of said country. . . .

The Company's training program is in-depth and will fundamentally teach the trainee the intricacies involved in overall sales, marketing[,] and operations of The Company.

At the end of the training program, [the beneficiary] will return to his home country and start employment at the Philippine-based affiliate as The Company's Sales/Marketing and Operations Manager.

At the time the petition was filed, the petitioner submitted an outline of its proposed training program. According to this outline, the training program would consist of five phases, with the first and second phases consisting of two sessions each. The petitioner stated that the beneficiary would be supervised by the petitioner's chief executive officer.

The first phase of the proposed training program would consist of two sessions. The first session, entitled "General Company Orientation," would last one week. The second session, entitled "Company Operations," would last 30 weeks.

The second phase of the proposed training program would also consist of two sessions. The first session, entitled "Advertising and Public Relations," would last 30 weeks. The second session, entitled "Marketing and Sales," would last 20 weeks.

The third, fourth, and fifth phases would last one week each. The third phase would be entitled "Records Management System," the fourth phase would be entitled "Accounting/Budgeting," and the fifth phase would be entitled "Review and Evaluation."

In his November 13, 2006 request for additional evidence, the director requested additional information regarding the details of the proposed training program. In an attachment to its December 27, 2006 response to the director's request for additional evidence, the petitioner altered the structure of its training program.

Under the petitioner's revised training program, the first phase was shortened from 31 weeks to 22 weeks: the first session was lengthened from one week to two weeks, and the second session was shortened from 30 weeks to 20 weeks.

The second phase of the proposed training program was shortened from 50 weeks to 40 weeks: the first session was shortened from 30 weeks to 20 weeks, and the second session remained unchanged at 20 weeks.

The third, fourth, and fifth phases, which originally lasted one week each, were also changed. The third and fourth phases would now last four weeks each, and the fifth phase would now last six weeks.

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 it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified.

In his September 21, 2007 denial, the director stated the following:

Since you indicate in the petition that the company has four (4) employees, the USCIS is not convinced that you can simultaneously train a new employee and operate the business in a viable fashion.

In its October 9, 2007 letter submitted on appeal, the petitioner states the following:

The training program that was submitted was proposed to me by [REDACTED] [the brother of the president of the petitioning entity] who is an established trainer . . . . [REDACTED] will be hired as a trainer and will be in charge of the beneficiary's development. We will together evaluate the beneficiary's development with the table submitted with the training program.

The AAO finds the petitioner's explanation deficient. First, the petitioner's initial submission did not **mention** [REDACTED] as the trainer; rather, it stated that the beneficiary would be supervised by the petitioner's chief executive officer. [REDACTED]'s name did not appear in the record until the petitioner filed its response to the director's request for additional evidence. 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**. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Nor does the record contain any documentary evidence regarding [REDACTED]'s qualifications to provide the training. 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)).

The record of proceeding, as currently constituted, does not satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

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.

The AAO incorporates here its previous discussion regarding the alterations made to the proposed training program during the time this application has been pending. Such changes are not indicative of a

training program with a fixed schedule. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of this petition.

The director also found that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States. The AAO agrees. 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.

In his denial, the director stated the following:

It does not appear that there is an affiliate outside the United States where the beneficiary would obtain employment. It does not appear that this proposed training will be preparing the beneficiary for a specific career abroad upon completion of the program.

On appeal, the petitioner states that its “affiliate business in the Philippines is still under works.”

The AAO agrees with the director’s analysis. As the purpose of the proposed training program is to train the beneficiary on the petitioner’s unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner. As the petitioner has no operations in the Philippines, there exists no setting in which he would be able to utilize his newfound knowledge. 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). The record contains no documentary evidence of the petitioner’s expansion plans, 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)). The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4).

Finally, the director found that the petitioner had failed to establish that the proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the field. The AAO agrees. 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 director stated the following in his denial:

It does not appear that the training program is substantially different than the curriculum the beneficiary successfully completed in his Bachelor of Commerce degree program. . . .

The petitioner states the following on appeal:

Yes, the beneficiary has a Bachelor degree in Commerce and yet he still needs to be trained in terms of Website Sales, Direct TV[,] and Mail Order Catalogs. He also needs to be trained regarding Marketing, Advertising[,] and Accounting with regards to the nature of our business.

The record of proceeding contains a copy of the beneficiary’s undergraduate transcript. While earning a bachelor’s degree in commerce from the University of Santo Tomas, the beneficiary took such classes as

oral communication skills; mathematics of investments; business origin and management; business communications; *math analysis in business*; *elementary accounting parts I and II*; analysis of financial statements; management of human resources; business finance; marketing principles; COBOL programming; quantitative techniques in business; managerial economics; business ethics; corporation finance; business policy; international economics; and economic research with a practicum.

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). The question is whether the beneficiary already possesses substantial training and expertise in the proposed field of training, not whether he possesses training and expertise regarding the petitioner's company. The record establishes that the beneficiary has substantial training and expertise in the field. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

The petitioner has failed to overcome the grounds of the director's denial of the petition. Accordingly, the AAO will not disturb the director's decision.

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.