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U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 196 53400 Office: CALIFORNIA SERVICE CENTER Date: JUN 30 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.

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 textile manufacturer and wholesaler with ten employees that seeks to employ the beneficiary as a management analyst trainee 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 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 five grounds: (1) that the petitioner had failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) that the petitioner had failed to describe the type of training and supervision to be given; (3) that the petitioner had failed to set forth the proportion of time to be devoted to productive employment; (4) 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 (5) that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.¹

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

¹ On appeal, counsel incorrectly states that there was only one ground of denial.

- (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 May 14, 2007 letter of support, the petitioner stated the following:

Over the past 15 years, [the petitioner] has established a reputation as one of the most innovative, trend setting textile and reliable importers, converters, and distributors of textile in the garment industry. With this, our business has expanded nationwide, with our exports destined for South America, Europe, and Asia. . . .

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

The goal of the training is to prepare the trainee for placement abroad in the future affiliate office of the company with responsibilities including management and quality control of manufactured products. The trainee will be trained in all areas of [the petitioner's] operations, and [will] provide the trainee with a range of specific professional skills relating to the specialized importing and market analysis methods utilized by the company.

The petitioner described its proposed training program as follows:

[The beneficiary] will learn and apply the knowledge and skills gained through this training experience in the areas of industrial management and manufacturing safety. The training will also provide [the beneficiary] with the knowledge of the company's policies, project management and operation systems, placing particular emphasis on quality control and quality assurance for manufactured clothing products in the United States market, with the goal of applying these concepts to international markets.

The proposed training will last 24 months. The trainee will undergo academic instruction and practical training six hours per day, five days per week. The trainee will continue further training sessions only upon successful completion of the prior training sessions. The trainee will receive approximately 75% academic training in class instructions and discussions, 15% of the training will be in written and oral presentations, and 10% will be supervised practical training. . . .

As noted previously, the petitioner's proposed training program would last 24 months. It would be broken down into eight modules: (1) Introduction; (2) Sales Management Analysis Training; (3) Financial Management Analysis Training; (4) Customer Service Analysis Training; (5) Human Resources Analysis Training; (6) Win-Win Negotiations Analysis Training; (7) Technical Presentations Analysis Training; and (8) Strategic Plans Analysis Training. The first module of the proposed training program would last two months; the second would last four months; the third would last four months; the fourth would last four months; the fifth would last four months; the sixth would last two months; the seventh would last two months; and the eighth would last two months.

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 an established training program that 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 his January 15, 2008 denial, the director stated the following:

The training schedule provides little detail about how the training would actually occur or what the structure of the training would be. The regulations clearly state that a training program cannot be approved if it deals in generalities. . . .

On appeal, counsel states the following:

The training program submitted is not a general outline. It listed detailed topics and time allocation for each major section.

The AAO agrees with the director's analysis. 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 second module of the proposed training program would last four months. The petitioner's description of how the beneficiary would spend this period of time consists of a brief summary. The petitioner states that changes in assignments are a part of life and that the manner in which sales managers coach their sales team affects job performance and satisfaction significantly. The petitioner states that this module will give the beneficiary the tools to make the most of his day-to-day interactions with his subordinates. The petitioner sets forth several skills the beneficiary will learn during this module, such as how to effectively manage and control anger and facilitate, guide, and close discussions. The petitioner, however, fails to explain how the beneficiary will actually spend his time during this module while learning these skills. This vague, generalized description fails to explain what the beneficiary would 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 of the training program, but the description provided is inadequate.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. The petitioner's description of how the beneficiary would spend this period of time consists of summary outlines without specific descriptions of the daily training program. Again, the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute 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 establish that its proposed training program does not deal in generalities. 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 training and 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 describe the type of training and supervision to be given, and the structure of the training program.

The AAO incorporates here its previous discussion regarding the vague and generalized nature of the petitioner's description of its proposed training program. The petitioner has failed to adequately describe the type of training that the beneficiary would receive. It 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 to be devoted to productive employment; 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 that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training, as required by 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(2), (3), and (6). The AAO disagrees. Counsel provided this information in his November 16, 2007 response to the director's request for additional evidence. Accordingly, the AAO withdraws that portion of the director's decision finding otherwise.

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 two additional reasons.

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 its May 14, 2007 letter of support, the petitioner stated the following:

It is well known that the Philippines has problems with advanced education and training in technology . . . In order to excel in management analysis and logistics, one must be familiar with the use of computer[s] and Internet. However, most Filipinos live below the poverty lines [sic] where computing and [the] Internet are unthinkable frivolities . . . In addition, the lack of facilities, schools that offer computers and access to the Internet also make the knowledge of computers [and] IT knowledge a luxury in the Philippines.

In his August 29, 2007 request for additional evidence, the director stated the following:

The petitioner's broad generalizations that the beneficiary cannot receive training in textile manufacturing and wholesal[ing] in her home country, without supporting evidence, are insufficient.

In his November 16, 2007 response to the director's request for additional evidence, counsel repeated, verbatim, the petitioner's paragraph quoted above, and added the following:

Management Analyst training in textile products wholesaling and importing is not available in the Philippines as the training will first be focused on the US market, its business environment[,] and the fast-changing textile converting, wholesaling[,] and importing industry. . . .

[The] Philippines has problems with advanced education and training in healthcare and other fields primarily because of poor elementary and secondary education. . . .

The use of [the] Internet for medical research and management is essential to provide the best medical services to the patients. . . .²

Computer use in the medical field is also necessary as experience and solutions in handling unknown diseases and sickness can easily be accessible to the medical providers worldwide. . . .

* * *

Most, if not all, of the petitioner's management analysis training will be conducted on computers. Thus, the necessary training to be provided to the beneficiary is not available in the Philippines.

The record does not support counsel's analysis. First, the AAO finds counsel's assertion that the beneficiary's training "will first be focused on the US market, its business environment and the fast-changing textile converting, wholesaling and importing industry" deficient. Counsel has submitted no evidence to establish that the United States textile market, the United States business market, or the United States "textile converting, wholesaling and importing industry" are different from that of the Philippines. Simply 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).

Further, counsel states that computer and IT knowledge is "a luxury" in the Philippines and that, for most Filipinos, "computer and Internet surfing are unthinkable frivolities,"³ and submits evidence regarding its educational system.⁴ The issue to be addressed is not whether the Filipino economy is less advanced than that of the United States. The issue is whether similar training is available in the Philippines. The Philippines possesses many well-established, and well-respected, colleges and universities. Many of these schools offer computer training. The AAO also takes note here that many United States firms have outsourced information technology functions to the Philippines.⁵ This does not necessarily demonstrate

² Given that the petitioner is not engaged in the healthcare industry, it is unclear to the AAO why the beneficiary would need to access the internet in order to provide medical services to patients.

³ As of April 2007, the Philippines had 14,000,000 internet users. See <http://www.internetworldstats.com/asia.htm> (accessed June 10, 2008).

⁴ A simple google search reveals that many colleges and universities offer undergraduate and graduate training in computer science. See, e.g. http://www.engg.upd.edu.ph/cs/undergraduate_program.html (accessed June 10, 2008); see also http://www.engg.upd.edu.ph/cs/graduate_program.html (accessed June 10, 2008); see also <http://www.ics.uplb.edu.ph> (accessed June 10, 2008).

⁵ See, e.g., http://www.businessweek.com/print/globalbiz/content/sep2006/gb20060919_639997.htm (accessed June 9, 2008): "[The] Philippines gets high marks for its large educated talent pool and English

that training programs similar to that proposed here exist in the Philippines, but it does undermine the evidence submitted by the petitioner. The petitioner has not established that similar training is unavailable in the Philippines. It has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) or 8 C.F.R. § 214.2(h)(7)(ii)(B)(5). For this additional reason, the petition may not be approved.

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 request for additional evidence, the director stated the following:

List the total number of full-time trainers on the petitioner's training staff. If the petitioner does not employ full-time trainers, indicate if the duties of the trainer are collateral and describe the work the trainers normally do when not performing in a training capacity. Indicate exactly who will give the classroom training and who will provide the on-the-job training. . . .

Provide a copy of the trainer's certification to show that the trainer is qualified to train the beneficiary in textile manufacturing and wholesal[ing].

* * *

Submit a copy of the petitioner's line and block organizational chart showing its hierarchy and staffing levels. The chart should include the current names of all executives, managers, supervisors, and employees within each department or subdivision. Clearly identify the beneficiary's position in the chart. List all employees by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages (in United States Dollar equivalents) and immigration status (L-1, H-1B, B-1, E-1, E-2, F-1, permanent resident, citizen, etc.) for all employees [underlining in original].

In response, counsel stated the following:

The trainee will be supervised at all times. The principal trainer will be the company's president, [name withheld]. Managers from other departments will also participate in the training from time to time. . . .

Your request to include job title, job descriptions, immigration status, salary, and education level for ALL employees is burdensome, unreasonably overbroad[,] and a

language skills . . . [t]he recent growth spurt in the outsourcing industry in the Philippines has been fueled not by traditional low-valued-added call centers but by more higher-end outsourcing such as legal services, Web design, medical transcription, software development, animation, and shared services. . . ." See also <http://www.computerworld.com/action/article.do?command=viewArticleTOC&specialReport+ID=360&articleID=84815> (accessed June 9, 2008): "[T]he Philippines' popularity [for IT outsourcing is due to] its English proficiency, a highly skilled workforce (380,000 college graduates annually) . . . [T]here are about 10,000 software programmers nationwide."

disregard of privacy. Therefore, the petitioner will submit its organizational chart with job titles for some of its key employees.

The petitioner stated on the Form I-129 that it has ten employees. The organizational chart listed seven of its employees and their job titles. The petitioner did not provide the names of the other three employees. Nor did it provide job duties, educational levels, annual salaries, or immigration status for the seven employees it did name.

The information requested by the director would corroborate the petitioner's statement on the Form I-129 that it employs ten people and was within the director's discretion to request. Counsel identifies no specific statutory or other authority to invoke a privilege or immunity against disclosure in these proceedings, other than the vague statement that the request was a "disregard of privacy."

Counsel may not unilaterally make a determination that a requested item is "burdensome" and "unreasonably overbroad," and refuse to submit that item while offering no substitute evidence to satisfy the concern of the director. Without information regarding the backgrounds of the petitioner's employees the record, as it currently stands, fails to establish that anyone on the petitioner's staff, including its president, is qualified to provide the training set forth in this petition. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Moreover, the petitioner has failed to explain how, if the beneficiary will be principally trained by the petitioner's president for a period of two years, the president's normal workload will be performed during that time. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner has failed to establish that it has sufficiently trained manpower to provide the training described in the petition. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G). 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.