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FILE: EAC 07 078 51832 Office: VERMONT 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:
[Redacted]

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 composite materials manufacturer that seeks to employ the beneficiary as a quality assurance trainee for a period of eighteen 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 establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (2) that the petitioner had failed to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

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

[The petitioner] manufactures Adhesive Films, Solution Coated Woven Prepegs, Hot Melt Woven Prepegs, Solution Coated Unidirectional Prepegs, Facesheets, Paste Adhesives, Foaming Core Splice Adhesives, Insert Potting Compounds, Core Edge Filters, Artificial Stone Veneering[,] and many other Specialty Products. . . .

* * *

The goal of the training program is to provide [the beneficiary] with the expertise knowledge and practical experience of quality assurance, logistics, warehouse distribution etc. This will equip him with the ability and insight to meet the needs in our forthcoming office. Moreover, the training will give the trainee first-hand knowledge of the operations of our business and give us a solid foundation by taking the permanent management position in our anticipated branch office in the Philippines.

* * *

It is very essential that the training be conducted here because in the training program, we will introduce the goal[s] and polic[ies] of our company. . . .

In its March 5, 2007 response to the director's request for additional evidence, the petitioner stated the following:

[The petitioner] has an in-house training program to provide our trainees with the expertise in product development, inventory management, and composite materials technology. . . .

The goal of the training program is to provide [the beneficiary] with the expertise knowledge and practical experience in all respects of composite materials' assurance quality management.

The petitioner stated that the proposed training program would consist of three components. Each component would consist of 75% classroom instruction and 25% on-the-job training. The first component, entitled "Product development," would last seven months. The second component, entitled "Inventory/Logistics Management," would also last seven months. The third component, entitled "Composite Materials Technology," would last four months.

As a preliminary matter, the AAO notes that the Form I-129 describes the nature of the petitioner's business operations as "Manufacturer of Composite Materials." On appeal, counsel also states that the beneficiary would receive "healthcare and management training," and that such training would be conducted on computers. However, given the objectives of the petitioner as set forth in the record, it is unclear to the AAO how the beneficiary would benefit from "healthcare and management training." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds that the petitioner's diverse business operations of composite materials manufacturing and an unclear relationship to the healthcare industry are not supported by the record. 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. *Id.* at 591.

Having highlighted the questions surrounding the petitioner's claimed business ventures, the AAO turns next to the matters raised by the director in his denial. 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.

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 first component of the proposed training program would last seven months. The petitioner's description of how the beneficiary would spend this period of time consists of a three-sentence summary. The petitioner states that, during this time, the beneficiary would receive an introductory course on composite materials; learn about the practical and creative aspects of product design and use; and apply his product development knowledge and the development of his skills for creating products for specialized markets, specifically the aerospace, marine, medical, sporting, automotive, and other extreme environment applications. Such a vague, generalized description does not 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 much of the rest of its proposed training program suffers similar deficiencies. The second component of the proposed training program would also last seven months. The petitioner's description of how the beneficiary would spend this period of time is also presented in summary form, consisting of a three sentence summary. The petitioner's description of how the beneficiary would spend this period of time consists of a summary outline without specific descriptions of the daily training program.

The record contains a "Quality Manual," a sheet that references "only some of the Laboratory duties," a "Sample Mechanical Test," and several pages described by the petitioner as "Physical Testing Procedures." In its response to the director's request for additional evidence, the petitioner referenced these materials as "the training material." However, the petitioner does not explain how any of these materials will be worked into the training program. It does not state when any of the texts will be used (i.e., during which component).

The AAO finds this description deficient. 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, this description is inadequate. 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. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A).

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)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

In its letter of support, the petitioner stated the following:

[T]he training will give the trainee first-hand knowledge of the operations of our business and give us a solid foundation by taking the permanent management position in our anticipated branch office in the Philippines.

In its response to the director's request for additional evidence, the petitioner stated the following:

We personally believe that it is more effective for the trainee to be trained in our facilities, so [the] trainee will learn all the facets of the business for reapplication. The trainee must need to be familiarized with our systems, in-house invented equipment and in our design fixtures and manufacturing composites tools. . . .

It is also important for the trainee to be trained in our culture environment; team works, integrity, hard work, innovation[,] and excellent work quality. . . .

* * *

[R]ight after the training, the trainee will be sent back to his home country to reapply the learning and will serve as the resource for his future training in his home country. . . .

* * *

[O]ur plans for expansion are recent.

In his July 11, 2007 denial, the director stated the following:

Despite your claim that the training will provide the beneficiary with expertise knowledge and practical experience of quality assurance, logistics and warehouse distribution to fill the permanent management position in your Philippines branch, you have yet to establish operations in the Philippines. . . .

Given the non-existence of the petitioner's business operations in the Philippines, a training program geared toward the petitioner's specific practices and operational way of doing business has no merit. . . .

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 in work 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). In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize his skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training. 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)(ii)(A)(4).

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 response to the director's request for additional evidence, the petitioner offered the following explanation as to why the proposed training is unavailable in the Philippines, stating the following:

[E]ducation in the U.S. is amongst the highest ranked in the world . . . the top 25 universities in the entire world consist of 19 United States universities. As U.S. education comprises more than 75% of the universities on this list, the training that [the beneficiary] will receive with our company in the U.S. will benefit him for careers outside of the U.S.

The AAO finds the petitioner's analysis deficient. The beneficiary would not be receiving instruction at a United States institution of higher education, so the fact that such institutions are highly regarded is irrelevant.

The petitioner also submitted four letters in response to the director's request for additional evidence. Each of the letters stated that quality assurance training in the manufacture of composite materials for the aerospace and related industries is unavailable in the Philippines. However, none of the authors of these letters provide any information regarding their professional backgrounds from which to opine on the issue. Thus, the petitioner has not established the reliability and accuracy of any of these pronouncements, and these submissions are therefore not probative of any of the criteria at issue here. Moreover, the AAO notes the near-identical wording of these letters, which raises the question as to who actually wrote them. 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 information submitted by counsel on appeal sufficient. Counsel rests his claim that similar training is unavailable in the Philippines on the basis of the assertions that most of the proposed training

would take place on computers. 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,”¹ and submits evidence regarding its educational system.² Counsel also states that “the [u]se of Internet for medical research and management is essential to provide the best medical services to patients,” that “computer use in the medical field is also necessary as experience and solutions in handling unknown diseases and sickness can easily be accessible,” and that “[m]ost, if not all, of the petitioner’s healthcare and management training will be conducted on computers.”³

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.⁴ This does not necessarily demonstrate 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)(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 beneficiary earned a bachelor’s degree in management and industrial engineering in 1984. His transcript indicates that he took, among other courses, the following: Physics I, II, and III; Engineering Drawing I, II, III, and IV; General Chemistry; General and Inorganic Qualitative Chemistry; Elements of Electrical Engineering I and II; Organization and Management; Engineering Mechanics; Thermodynamics; Introduction to Engineering Management; Manpower Management and Development;

¹ As of April 2007, the Philippines had 14,000,000 internet users. See <http://www.internetworldstats.com/asia.htm> (accessed June 9, 2008).

² 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 9, 2008); see also http://www.engg.upd.edu.ph/cs/graduate_program.html (accessed June 9, 2008); see also <http://www.ics.uplb.edu.ph> (accessed June 9, 2008).

³ Again, the AAO finds the petitioner’s claimed diverse business operations of composite materials manufacturing and an unclear relationship to the healthcare industry unsupported by the record. 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, 591-92 (BIA 1988).

⁴ 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 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.”

Elementary Chemical Engineering; Elementary Mechanical Engineering; Strength of Materials; Industrial Relations; Managerial Services; Production Information and Control Systems; Methods and Systems Engineering; Production Planning and Control; and Management Operating Systems. With regard to the beneficiary's career since graduating from college in 1984, the petitioner stated the following in its letter of support:

[The beneficiary] acquired operations and engineering positions from various sized companies in the Philippines from 1984 to 1999.

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 record establishes that the beneficiary has substantial training and expertise. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C). 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.

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