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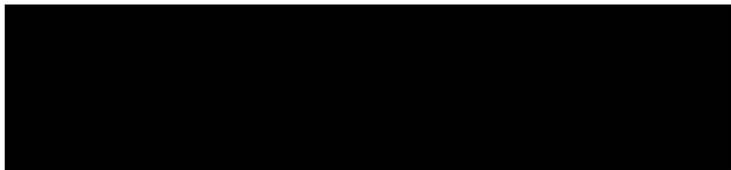
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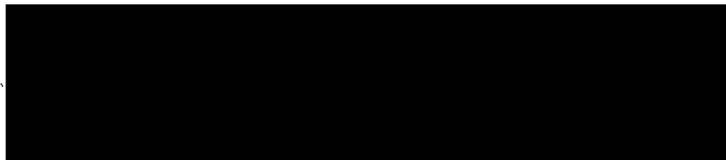
FILE: WAC 07 222 51727 Office: CALIFORNIA SERVICE CENTER Date: JUN 30 2008

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.

A handwritten signature in black ink, appearing to read "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 university that seeks to employ the beneficiary as a “financial management, procurement, and workforce personnel 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 three grounds: (1) that the petitioner had failed to adequately describe the career abroad for which the proposed training would prepare the beneficiary; (2) that the petitioner had failed to establish that the beneficiary would not be placed in a position that is in the normal operation of the petitioner’s business and in which U.S. citizens and resident workers are regularly employed; and (3) that the petitioner had failed to establish that the beneficiary would not receive training provided at or by an academic or vocational institution.

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 July 11, 2007 letter of support, the petitioner stated the following:

[The petitioner] was originally founded in 1994 as a postsecondary training institution to educate and equip students for life careers in the field of health education and to produce quality healthcare professionals for the community and the country.

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

The purpose of the training program for a Financial Management, Procurement, and Workforce Personnel Trainee is to equip the trainee with capabilities to manage a future branch of [the petitioner] without day-to-day guidance of the headquarters. Therefore, [the] objective of the training is to provide the trainee with the knowledge and skills crucial in all areas of management analysis: sales, negotiations, financial analysis, and management of human resources. Structured lectures in all these areas will prepare the trainee to assume professionalism in dealing with clients and partners and leadership with the staff [sic]. The trainee shall retain the ability to make independent prudent business decisions as well.

The petitioner described its proposed training program as follows:

The trainee will be trained in all areas of [the petitioner's] operations, and to provide the trainee with a range of specific professional skills relating to the specialized management analysis and procurement methods utilized by the university.

[The beneficiary] will learn and apply the knowledge and skills gained through this training experience in the areas of specialized management analysis and procurement methods, as well as workforce personnel, when she will commence employment in the Philippines. The objective of the training program is to provide [the beneficiary] with the knowledge of the university's policies, financial management and workforce personnel systems, placing particular emphasis on management and procurement for undergraduate and graduate studies in the United States, with the goal of applying these concepts to international students.

The petitioner explained that the beneficiary would receive instruction and training six hours per day, five days per week. Academic training would comprise sixty-five percent of the proposed training program, and supervised training would comprise the remaining thirty-five percent of the training program. The petitioner also stated that the beneficiary would be personally overseen and supervised by the petitioner's president.

According to the petitioner, the proposed training program would be divided into four parts: (1) Orientation and Introduction to the University; (2) Training in Financial Management of University; (3) Procurement in Management of University; and (4) Workforce Personnel in Management of University. The first part of the petitioner's proposed training program would last two months; the second part would last seven months; the third part would last four months; and the fourth part would last five 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 adequately describe the career abroad for which the proposed training would prepare the beneficiary. 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, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

As noted previously, the petitioner stated in its letter of support that the beneficiary will "manage a future branch" of the petitioner.

In her October 4, 2007 request for additional evidence, the director stated the following:

Explain further how the knowledge or skills acquired in the proposed training will benefit the beneficiary in pursuing a career outside the United States. Provide evidence to show that there is a career abroad for which the training will prepare the beneficiary.

In his December 24, 2007 response to the director's request for additional evidence, counsel stated the following:

The petitioner's goal is not just to expand locally, but also internationally. The petitioner has constantly exchanged ideas with foreign institutions discussing new curriculums [sic] and how to better utilize available materials to suit the patients' requirements. After successful completion of the training, the trainee will return to her home country to initially establish a lead for the petitioner's expansion project. The beneficiary will not only perform the managerial tasks, but also will initially serve as a training resource for the petitioner's future employees in the Philippines.

* * *

The petitioner's goal is to expand locally as well as internationally. It has plans to extend its health sciences teaching services to other Southeast Asia countries. It has been determined that the best place to set up an affiliate institution would be in the Philippines in terms of accessibility and economics. Upon successful completion of the training program, the beneficiary will return to the Philippines and could provide operations and management analysis and future training to employees in the petitioner's branch institution.

In her January 22, 2008 denial, the director stated the following:

[T]he petitioner has not adequately described the career abroad for which this training will prepare the alien. The record indicates that the petitioner's goal is to expand locally as well as internationally and that it has plans to set up an affiliate institution in the Philippines. The record further indicates that the purpose of the training is to equip the trainee with capabilities to manage a future branch of [the petitioner] without day-to-day guidance of the headquarters. From this information, it is clear that there are no

Philippine affiliates in existence at this time. This is further supported by the lack of documentation provided by the petitioner in response to the issued request for more information pertaining to their Philippines affiliate. At this time, the petitioner has not established that there is currently a career abroad for which the beneficiary will utilize her learned knowledge upon completion of the petitioner's training program. [Nor] does the petitioner indicate how or where the beneficiary will utilize her learned knowledge until the future affiliate becomes a reality.

Counsel states the following on the Form I-290B:

Should the alien complete the training successfully, the petitioner will be more confident in setting up the overseas office. However, if there is any delay in setting up the overseas office, [the] alien can rely on the knowledge gained by the training to find a better job and make herself more marketable in her home country. This conclusion drawn by USCIS that the alien cannot have multiple career options abroad is absurd and unfounded.

Counsel repeats these assertions in his appellate brief.

The AAO does not accept counsel's assertion that the beneficiary "can rely on the knowledge gained by the training to find a better job and make herself more marketable." This statement is deficient for two reasons. First, counsel's vague reference to an undefined "better job" is too general a description to satisfy the regulation. Second, stating that the beneficiary would be able to use her newfound training for an entity other than the petitioner conflicts with assertions made by counsel and the petitioner elsewhere in the record. Both counsel and the petitioner have made repeated assertions regarding the lack of computer and internet training in the Philippines. For example, the petitioner stated the following in its letter of support:

It is well known that [the] Philippines has problems with advanced education and training in technology and other fields primarily because of poor elementary and secondary education, lack of qualified faculties and shortage in facilities and weaknesses in planning, budgeting[,] and implementing processes. In order to excel in management analysis and logistics, one must be familiar with the use of the Internet. However, most Filipinos live below the poverty lines [sic] where computing and [the] Internet are unthinkable frivolities.

Counsel reiterated this paragraph in his response to the director's request for additional evidence, and added the following:

[T]he technical education and accessibility to computers and other information needed in the healthcare field are very limited in the Philippines. Most, if not all, of the petitioner's logistics and management training will be conducted on computers. Thus, the necessary training to be provided to the beneficiary is not available in the Philippines.

Counsel has also asserted that knowledge of computers and information technology is a luxury in the Philippines.

Given the assertions of counsel and the petitioner regarding the lack of access to computers in the Philippines, and that the lack of access to such technology is so acute in that country that the beneficiary is unable to find training there (and must travel to the United States in order to receive it), it is unclear to the AAO what type of position she would be able to fill in the Philippines as a result of having obtained the training, if she is not to work for the petitioner. The record fails to establish what types of companies or organizations would employ the beneficiary in the Philippines with access to the computers and information technology that the beneficiary will use during her training.

For all of these reasons, the AAO finds counsel's argument that the beneficiary "can rely on the knowledge gained by the training to find a better job and make herself more marketable" deficient.

Further, the AAO agrees with the director's analysis regarding the lack of career opportunities in the Philippines. Since the beneficiary's newfound knowledge will be specific to the petitioner, it appears that an operation run by the petitioner would be the only setting in which he would be able to use the 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, as presently constituted, contains no information or evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any evidence, beyond the assertions of record, to demonstrate that it is in the process of setting up operations in the Philippines. 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).

The petitioner has failed to establish that its proposed training program will benefit the beneficiary in pursuing a career outside the United States. It has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4).

The director also found that the petitioner had failed to establish that the beneficiary would not be placed in a position that is in the normal operation of the petitioner's business and in which U.S. citizens and resident workers are regularly employed. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires a demonstration that 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.

In her denial, the director stated the following:

It will be noted that a recent Internet search revealed that the beneficiary's name is now listed under [the petitioner's website] as the Director of Sales and Marketing. This would indicate that the beneficiary is currently working in the normal operation of the University.

Counsel states the following on the Form I-290B:

The training is not intended for productive employment . . . Realistically, even if the petitioner wants to have the alien perform productive employment, the alien will not have enough time to complete the training successfully and provide productive employment to the petitioner at the same time.

Counsel and the petitioner have elected not to respond directly to the issue raised by the director, specifically, her finding that the petitioner, as of January 8, 2008, named the beneficiary, on its website,¹ as the petitioner's Director of Sales and Marketing. The petitioner specifically named the beneficiary as a member of its administration (as its Director of Sales and Marketing) on its public website. No explanation has been submitted as to why it did so if the beneficiary was not working within the normal operation of the petitioner's business.² The petitioner was placed on notice via the director's denial that information derogatory to the petitioner had been located outside the record, but the petitioner has elected not to respond to it. It has therefore failed to overcome it. That the petitioner named the beneficiary as its Director of Sales and Marketing on its public website indicates that it intends to place the beneficiary in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

Finally, the director found that the petitioner had failed to establish that the beneficiary would not receive training provided at, or by, an academic or vocational institution. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(1)(ii)(E)(1) states that "[a]n H-3 classification applies to an alien who is coming temporarily to the United States: (1) As a trainee, other than to receive graduate medical education or training, *or training provided primarily at or by an academic or vocational institution* (emphasis added)"

The director stated the following in her denial:

The USCIS notes that the petitioner is primarily a postsecondary training institution/school. **The petitioner provides instruction in a school-like setting in preparation for a specific career and provides graduate degrees, post graduate certificates, undergraduate degrees[,] and undergraduate certificates.** Because the petitioner is a vocational institution, the beneficiary is not eligible for H-3 classification.

On appeal, counsel states the following:

Petitioner's business is to provide training to students in healthcare fields. It allows students to obtain a certificate or degree so they may obtain permanent employment in the medical and pharmaceutical communities. However, the proposed training to [the] Beneficiary is not to prepare her for any employment in the medical or pharmaceutical communities but to equip the Beneficiary with capabilities to manage a future branch of [the] Petitioner's facility in the Philippines without [the] day-to-day guidance of the headquarters. . . .

¹ See http://www.auhs.edu/admin_staff.html (accessed by the director on January 8, 2008).

² The record does not indicate the legal capacity in which the beneficiary was working for the petitioner on January 8, 2008. However, the AAO will not address this matter, as issues surrounding the beneficiary's lawful maintenance of immigrant status are beyond the scope of its jurisdiction.

The training is not for [the] Beneficiary to receive a postsecondary degree or certificate. Beneficiary is not being trained as a student but as a future employee in [the] Petitioner's overseas branch. . . .

The AAO find's counsel's rebuttal deficient. Whether the beneficiary will receive a degree or certificate is irrelevant. The relevant language at 8 C.F.R. § 214.2(h)(1)(ii)(E)(I) is "training provided primarily at or by an academic or vocational institution. The petitioner is clearly an "academic or vocational institution." As a result, the beneficiary is not eligible for H-3 classification.

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 an additional reason.

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.

On the Form I-129, the petitioner testified that it has six employees. In its letter of support, the petitioner stated that its president would "personally oversee the training and supervise the trainee at all times." During the proposed training program, the beneficiary would receive instruction and training six hours per day, five days per week. Academic training would comprise sixty-five percent of the proposed training program, and supervised training would comprise the remaining thirty-five percent of the training program.

The petitioner has failed to explain how, if the beneficiary will be trained by the petitioner's president for six hours a day for a period of eighteen months, 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.