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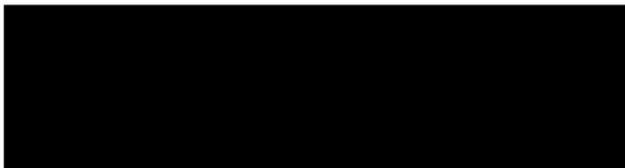
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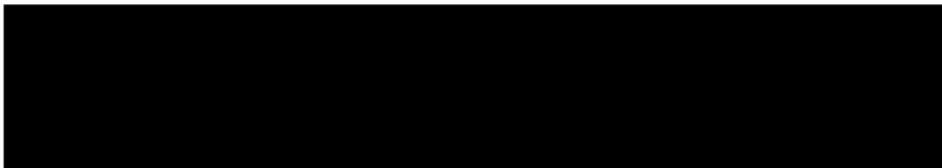
FILE: EAC 07 117 50328 Office: VERMONT SERVICE CENTER Date: MAR 17 2008

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.

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 importer that seeks to employ the beneficiary as an “international expert trainee” for a period of twenty 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 demonstrate that it has an established training program; (2) that the petitioner had failed to submit evidence that the beneficiary would be evaluated; (3) that the petitioner had failed to demonstrate that the proposed training is unavailable in the Philippines, the beneficiary’s home country; and (4) that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified.

On appeal, the petitioner 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 March 19, 2007 letter of support, the petitioner stated the following:

The trainee will be engaged in the international expert intensive training program with an exhaustive evaluation on the company's importing and wholesale business. The goal of the training is to prepare the trainee for placement abroad in the future affiliate office of the company. 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 importing and market analysis methods utilized by the company.

In its training manual, the petitioner states that the proposed training program would consist of six parts. The beneficiary would spend approximately seventy-five percent of his time in classroom instruction and discussion; fifteen percent of his time making oral and written presentations; and ten percent of his time in practical training.

The first part of the training program would consist of a two-month introduction to the petitioner's business operations.

The second part of the training program, entitled "Quality in Textiles," would last six months. It would be divided into three two-month sections: (1) Quality Assurance; (2) Quality Control; and (3) Total Quality Management.

The third part of the training program, entitled "International Procurement: Purchasing Textiles," would last two months. It would be divided into three sections: (1) Procurement; (2) Assessing Supplier; and (3) Import/Export in Product Purchasing;

The fourth part of the training program, entitled "Negotiations with International Partners," would last two months.

The fifth part of the training program, entitled "Logistics in Importing of Textiles," would last four months. It would be divided into two sections: (1) Logistics Methods; and (2) International Logistics.

The sixth part of the training program, entitled "Successful Management of Fabrics Inventory," 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 demonstrate that it has an established training program, and that the petitioner had failed to submit evidence that the beneficiary would be evaluated. 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 petitioner has submitted information regarding its method of evaluating the beneficiary. As such, the AAO finds that the petitioner has satisfied that portion of 8 C.F.R. § 214.2(h)(7)(iii)(A) relating to evaluation, and withdraws that portion of the director's decision accordingly.

However, the petitioner has not established that its training program does not deal in generalities. 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 part of the training program would last for two months. The petitioner's description of how the beneficiary would spend this period of time is less than one page long. The petitioner states that, during this time, the beneficiary will receive an introduction to the petitioner's profile; assess the petitioner's and its suppliers' product specifications and customer requirements; receive an introduction to the petitioner's purchasing staff; consider its application of environmental and health/safety standards; and maintain a constant awareness of the petitioner's business context and profitability. This vague, generalized description does not explain what the beneficiary would actually be doing on a day-to-day basis. Nor has the petitioner explained how the bullet-pointed concepts would be divided among the portions of the training program devoted to classroom training, written and oral presentation, and practical training. 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. For example, in the fifth part of the training program, which is to last four months, five pages of concepts are provided. In the sixth part of the training program, which is to last two months, three pages of concepts are provided. While additional information is provided for some of the parts of the training program, a comprehensive description has not been provided for any of the parts. A breakdown of how the classroom training, written and oral presentation, and practical training components of the proposed training is not provided for any of the parts. Again, 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 not satisfied 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 could not be obtained in the Philippines, the beneficiary's home country. The AAO agrees. 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 this 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.

In the present case, the stated reason for creation of the training program is to train the beneficiary on the petitioner's own business practices. However, the petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies.

Nor has the petitioner submitted documentary evidence to establish that similar training is unavailable in the Philippines. The evidence submitted by the petitioner in its June 6, 2007 response to the director's request for additional evidence is insufficient. For example, the petitioner stated that for most Filipinos,

computers and the internet are “unthinkable frivolities,”¹ and submitted evidence regarding its educational system.²

However, 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 training in computer science and in management. 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.

The petitioner has failed to demonstrate that the proposed training could not be obtained in the beneficiary’s home country. It has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) or 214.2(h)(7)(ii)(B)(5).

The director found that the petitioner had failed to demonstrate that it has sufficiently trained manpower to provide the training specified. 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 denial, the director stated the following:

No evidence of any classroom or training facilities were submitted. The photographs of the business which were submitted show a small, one room office/warehouse. There appears to be little room for the petitioner’s claimed twelve employees, let alone space to conduct a training program.

On appeal, the petitioner submits photographs of its classroom space. As such, the AAO finds the petitioner in compliance with 8 C.F.R. § 214.2(h)(7)(iii)(G), and withdraws the director’s finding to the contrary.

As discussed above, 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)(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 stated reason for creation of the training program is to train the beneficiary on the petitioner’s own business practices. Having made such an assertion, the petitioner must further demonstrate that there is a setting in which the beneficiary will be able to use his newfound knowledge.

¹ As of April 2007, the Philippines had 14,000,000 internet users. See <http://www.internetworldstats.com/asia.htm> (accessed February 22, 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 February 22, 2008); see also http://www.engg.upd.edu.ph/cs/graduate_program.html (accessed February 22, 2008); see also <http://www.ics.uplb.edu.ph> (accessed February 22, 2008).

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.³

The petitioner has asserted that the beneficiary will assist it in establishing operations in the Philippines. 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, however, 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)(2)(A)(4). For this additional reason, the petition may not be approved.

For this additional reason, 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).

Finally, the AAO turns to the petitioner's statement on appeal that CIS has approved similar petitions in the past. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the petitions referenced by the petitioner were approved based upon the same evidence contained in this record, their approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

³ The petitioner asserts on appeal that training "need not be solely for the purpose of placing the alien in the international organization of the employer, and need not even principally benefit the employer." The AAO agrees. However, and again, in this particular case the petitioner has not demonstrated that there is a setting in which the beneficiary would be able to use his newfound knowledge, since that knowledge would be specific to the petitioner.

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.