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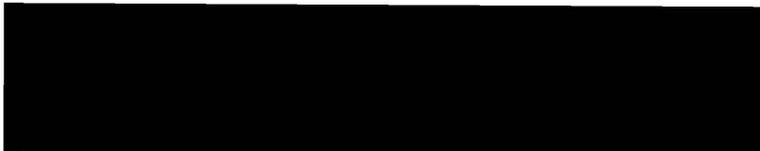
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U.S. Citizenship
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FILE: EAC 07 082 51387 Office: VERMONT SERVICE CENTER Date: **MAR 17 2008**

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, 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 retail sales company that seeks to employ the beneficiaries as trainees for a period of twenty-four months. The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker trainees 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 demonstrate that the proposed training is unavailable in Israel, the beneficiaries' home country; and (2) that the petitioner had failed to indicate the benefit that will accrue to the petitioner for providing the training.

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 25, 2007 letter of support, the petitioner stated that it operates retail kiosk carts at malls in Texas and Arizona. With regard to why it is offering the training, the petitioner stated the following:

The principal purpose of the training program is to provide qualified individuals with first-hand knowledge of the company's unique retail management practices and business strategies so that they can take this knowledge and skill abroad. Upon the successful

completion of the training program, the trainees will be given the opportunity to work for an affiliate of [the petitioner] located in Israel.

In the program syllabus submitted at the time of filing, the petitioner stated that the proposed training program would consist of five components. The first component, entitled "Introductory Training," would last four months. The beneficiaries would spend seventy percent of this time period in classroom training, and thirty percent in hands-on training. According to the petitioner, the areas of focus during this time would be the global business environment; the petitioner's current operations; and an intensive program of English language instruction.

The second component, entitled "Knowing the Company's Business Environment," would last four months. The beneficiaries would spend eighty percent of this time period in classroom training, and twenty percent in hands-on training. According to the petitioner, the areas of focus during this time would be logistics and business channels; promotion techniques; pricing strategies; negotiation management; customer service management; and location strategy.

The third component, entitled "Intensive Educational Program," would last nine months. The beneficiaries would spend eighty percent of this time period in classroom training, and twenty percent in hands-on training. According to the petitioner, the areas of focus during this time would be economics; statistics; operations management; marketing research; leadership; and business strategy.

The fourth component, entitled "Management Responsibilities," would last five months. The beneficiaries would spend seventy percent of this time period in classroom training, and thirty percent in hands-on training. According to the petitioner, the areas of focus during this time would be logistics and distribution management; pricing strategies; negotiation management; customer service management; location strategy; and workforce management.

The fifth component, entitled "Conclusion," would last two months. The beneficiaries would spend eighty percent of this time period in meetings and seminars, and twenty percent in hands-on training. According to the petitioner, the areas of focus during this time would be the company's image and its global reputation.

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 the proposed training could not be obtained in Israel, the beneficiaries' 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 that such knowledge could not be obtained from a retailer offering similar products.

Nor does the undated letter from [REDACTED] establish that the proposed training is unavailable in Israel. [REDACTED] states that she is not aware of any similar training programs in Israel; that the United States is by far the best environment for learning about business practices; and that she recommends the petitioner's training program.

The AAO finds that an inadequate factual foundation to support [REDACTED] opinion has been established. She does not note the location, size, or industry of the petitioner, nor indicate whether she reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. The extent of her knowledge of the proposed training program is, therefore, questionable. Nor has she established that she is qualified to opine on this matter, as she does not discuss her own educational or industry background, other than to state that she is the president of a company. Thus, the petitioner has not established the reliability and accuracy of her pronouncements, and this submission is therefore not probative of any of the criteria at issue here. 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).

Moreover, the AAO notes that [REDACTED] does not state that similar training is unavailable in Israel; she simply states that she is unaware of similar training. The petitioner has submitted no evidence to demonstrate that similar training is unavailable in Israel. 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 failed to demonstrate that the proposed training could not be obtained in the beneficiaries' 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 also found that the petitioner had failed to indicate the benefit that will accrue to the petitioner for providing the training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires the petitioner to indicate the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

In its submission and on appeal, counsel and the petitioner have explained that the beneficiaries would work for the petitioner in Israel after completion of the training program. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(6), and the AAO withdraws the director's finding to the contrary.

Accordingly, 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)(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, in the

third component of the petitioner's proposed training program, the petitioner states that the beneficiaries would spend eighty percent of their time in classroom training, and twenty percent in hands-on training. However, the classroom schedule submitted by the petitioner covers only seventy percent of their time. The petitioner has not explained how the remaining ten percent of time devoted to classroom instruction would be spent, nor does it explain how the beneficiaries would spend the time devoted to hands-on training. The AAO has little idea of what the beneficiaries would be doing for thirty percent of their time during this component.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. The petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiaries 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).

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 counsel's statement on appeal that CIS has approved similar petitions for the petitioner. 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 counsel 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).

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.