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FILE: WAC 06 800 09522 Office: CALIFORNIA 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 The director's decision will be withdrawn and the matter remanded to the service center for issuance of a new decision.

The petitioner is an equine operation that seeks to employ the beneficiary as a 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 three grounds: (1) that the petitioner had failed to demonstrate that it has the physical plant and sufficiently trained manpower to provide the training specified; (2) that the petitioner had failed to establish that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States; and (3) that the petitioner had failed to establish that the proposed training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of 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 June 26, 2006 letter of support, the petitioner stated the following:

[The petitioner] wishes to enroll and train [the beneficiary] in its International Equine Management (“IEM”) Training Program at its facilities in Lexington, Kentucky. Thereafter, once [the beneficiary] has completed his training, he will return to South Africa to continue his career as an equine manager.

With regard to why it offers this program, the petitioner stated the following:

In response to the extremely competitive and increasingly international scope of the Thoroughbred industry, [the petitioner] has undertaken to establish a comprehensive management training program. . . .

The IEM Training Program is intended to provide trainees with a thorough knowledge of and experience with the particular standards and practices that are employed in the U.S. by [the petitioner] . . . Upon completion of the IEM Training Program, the trainees are expected to be fully qualified to manage and/or expand [the petitioner’s] international operations. . . .

The petitioner also stated that upon completion of the training program, the beneficiary “will return to South Africa to continue his career as an equine manager.”

The petitioner provided extensive information regarding its proposed training program. According to the petitioner, the proposed training program would provide a total of 4160 total hours of instruction. The beneficiary would spend 1275 hours in classroom instruction, and the petitioner submitted a detailed breakdown of how those 1275 hours would be spent. The remainder of the beneficiary’s time would be spent in group and individual field instruction. The petitioner explained that any productive labor would be incidental to the training program, and that it would constitute no more than five percent of the beneficiary’s time.

The director found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified. The AAO disagrees. 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 its training syllabus, the petitioner stated that all training would be conducted under the direct supervision of the petitioner’s “internationally respected personnel and veterinarians.” In his October 6, 2006 request for additional evidence, the director asked for the names of the petitioner’s trainers. In its December 26, 2006 response, the petitioner stated the following:

Our organization does not employ any full-time trainers. However, we rely on a number of specialized and highly trained experts to provide the training and oversight so instrumental to our training program.

The petitioner provides the names and qualifications of the individuals who would provide the training, and submitted an updated program syllabus, updated to indicate which individuals would be supervising the various components of the training program. The AAO notes that veterinarians not on the petitioner’s

staff will supervise several of the components of the training program. On that basis, the director found that the petitioner had failed to establish that it had sufficiently trained manpower to provide the training.

The AAO disagrees with the director's finding. The petitioner has submitted detailed information regarding the identities of the individuals who will provide the training, as well as their professional qualifications. That the veterinarians who will provide the training are not on the petitioner's staff is not dispositive, and the AAO finds the petitioner's explanations and submissions reasonable.

With regard to the director's finding that the petitioner had failed to establish that it has the physical plant to provide the training because the submitted photographs did not show a computer, counsel asserts that the 21 photographs submitted by the petitioner "show the various facilities on the petitioner's farm that are used to provide training to the trainees, including areas for classroom instruction and for field instruction." Again, in this particular case the AAO finds the petitioner's explanations and submissions reasonable.

The AAO finds that the petitioner has established that it has the physical plant and sufficiently trained manpower to provide the proposed training. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(G), and the AAO withdraws the director's findings to the contrary.

The director also found that the petitioner had failed to establish that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(F) precludes approval of a petition in which the petitioner has not established that the proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States.

In his denial, the director stated the following:

[P]art of the training would include "taxes" which it appears would be related to United States taxes. Further, additional information provided in the training states that, "Trainees will study the Farm's design . . . paying particular attention to the proper relationship with the environment of equine ecosystems and current EPA and international regulations."

It is not clear why the beneficiary would be trained in United States Environmental Protection Agency and tax laws if he was not being recruited to staff the United States operation.

On appeal, counsel states the following:

[T]he fact that a very small percentage of the trainee[']s time (probably less than 1%) will be devoted to these areas in no way leads to the conclusion that the petitioner is [sic] training program is designed to recruit and train aliens for the staffing of its U.S. operations.

The AAO agrees that, if the beneficiary were to spend a great deal of time studying United States tax and environmental regulations, such study could constitute evidence that the petitioner intended for the beneficiary to staff its domestic operations. However, the AAO notes that, when considered in context, devoting such a small portion of the beneficiary's time to such matters appears reasonable.

In the initial submission, the petitioner stated the following with regard to EPA regulations:

Trainees will study the Farm's design from its fencing lay-out to its building structure, paying particular attention to the proper relationship with the environment of equine ecosystems and current EPA and international regulations. . . .

\* \* \*

Trainees will investigate proper business plan production and methods of implementation, paying particular attention to insurance, tax codes, and associated liability considerations, as well as good business practices and acceptable record keeping. . . .

The AAO notes that the beneficiary would not be studying EPA regulations in a vacuum; he would be studying them in the broader context of a study of equine facility design. If the beneficiary is to assist the beneficiary in expanding its operations in South Africa, the AAO presumes that the beneficiary would be required to analyze any South African environmental regulations in a similar context. Nor will the beneficiary be studying EPA regulations alone; the petitioner specifically states that the beneficiary will be studying international regulations as well. Moreover, it appears that the beneficiary would spend approximately four weeks (of a 24-month training program) on such activities. In the context of the entire training program, the AAO finds the petitioner's explanation reasonable.

The AAO applies the same analysis to the director's concern over the time to be spent by the beneficiary studying taxes. Again, the AAO notes that he would not be studying the United States system of taxation in a vacuum. As explained clearly by the petitioner, the beneficiary would analyze not only taxes, but also insurance, liability considerations, good business practices, and record keeping in the broader context of producing and implementing a business plan. Again, if the beneficiary is to assist the beneficiary in expanding its operations in South Africa, the beneficiary may be required to undertake such an analysis in a similar context there. The AAO finds the petitioner's descriptions and explanations reasonable.

The AAO finds that the petitioner has established that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. It has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(F), and the AAO withdraws the director's findings to the contrary.

Finally, the director found that the beneficiary already possesses substantial training and expertise in the proposed field of training. **The AAO disagrees.** 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.

In his denial, the director stated the following:

[I]t appears that the beneficiary has already received at least one year's training in horse husbandry/equine science and management as a J-1 nonimmigrant trainee that he received from at least two farms located in the same area where the petitioning entity is located.

As a preliminary matter, the AAO notes that the greater Lexington, Kentucky area is widely known as a major center for the equine industry, so the fact that the beneficiary acquired experience in that geographic area is not necessarily indicative that his previous training was identical to the training to be received in the petitioner's proposed training program.

On appeal, counsel explains that the training to be imparted via the proposed training program is different from that received by the beneficiary during his J-1 training. Counsel notes that the J-1 training was received at another farm and, since the primary focus of the program proposed here is to prepare the beneficiary to help expand the petitioner's operations abroad, the beneficiary would be learning about the petitioner's specific business operations. Moreover, counsel asserts that the training the beneficiary received in his J-1 training program was basic and foundational in nature. For example, the beneficiary learned such tasks as basic horse handling and the proper uses of bits. As noted previously, the goal of the training program proposed here is to train the beneficiary on management.

The AAO agrees with counsel's analysis, and finds no evidence in the record to support a finding that the training the beneficiary received in the J-1 training program was substantially similar to the training that will be provided by the petitioner. It appears that the beneficiary does not have substantial training and expertise in the proposed field of training. The AAO finds that the petitioner has established that the beneficiary does not already possess substantial training and expertise in the proposed field of training, and that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(C). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

For all of these reasons, the petitioner has overcome the grounds of the director's denial, and the director's decision is withdrawn.

However, the petition as presently constituted may not be approved. 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 reason for creation of the training program at issue here is to train the beneficiary on the petitioner's own business practices. Having made such a demonstration, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiary will be able to use his newfound knowledge. 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.

The petitioner has asserted that, upon completion of the training program, the beneficiary will be "expected to be fully qualified to manage and/or expand [the petitioner's] international operations," and "will return to South Africa to continue his career as an equine manager." 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 South Africa, the petitioner must document that it actually has plans to commence operations in South Africa 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, or that it is currently operating, in South Africa. 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). Therefore, the petition may not be approved at this time.

However, the director did not address this issue.

Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the petitioner has established that the proposed training would benefit the beneficiary in pursuing a career outside the United States. Specifically, the petitioner must submit documentary evidence to establish that it is currently operating, or that it has specific plans for expansion, in South Africa. Absent such information, the record does not establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States, since the proposed training is specific to the petitioner and the only setting in which he would utilize these skills would be for the petitioner in South Africa. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's March 21, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.