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FILE: WAC 07 197 53146 Office: CALIFORNIA SERVICE CENTER Date: **MAY 02 2008**

IN RE: Petitioner:
Beneficiary:



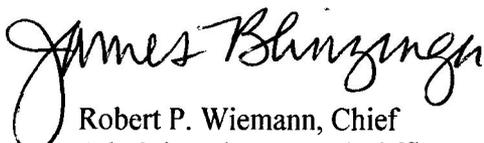
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Director, California Service Center, 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 non-profit religious corporation that seeks to employ the beneficiary as a creative stagnation technologist for a period of two years. 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 Form I-290B and the petitioner's brief on appeal. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis of her determination that: (1) the petitioner had failed to demonstrate that the proposed training program is unavailable in the beneficiaries' home country; and (2) the petitioner had failed to demonstrate that its proposed training program does not deal in generalities.

On appeal, the petitioner contends that the director erred in denying the petition.

As a preliminary matter, the AAO notes that, on the Form I-129 and in the petitioner's May 28, 2007 letter of support, the petitioner lists the beneficiary's job title as creative stagnation technologist. On appeal, the petitioner describes the beneficiary's position as Kabbalah consultant/centre manager. However, the AAO notes that, on appeal, the petitioner cannot offer a new position to the beneficiary, or materially change a position's title. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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.

According to the training program submitted with the petitioner's May 28, 2007 letter of support, the proposed training program would last for a period of 24 months. In the "Objectives and Specialty Training Requirements in Kabbalah," the petitioner describes the general objective of the training as follows:

On completion of the Kabbalah program, the graduate will be competent to function as a Kabbalist and oversee training modules in his or her own country and in the United States of America. The trainee will acquire a sufficient level of skill, knowledge and attitude to serve as a consultant in Kabbalahism.

The proposed training program will be divided into four different courses: The Power of Kabbalah (level I); The Power of Kabbalah (level II); The Power of Kabbalah (level III); and The Zohar. Each course is taught by one instructor for the duration of the course. The proposed training program does not state whether others will be trained along with the beneficiary, whether the training is live, and it does not provide a description of how the beneficiary will be evaluated other than stating that "at the end of 24 months and conditional on satisfactory performance, the candidate will be issued a certificate from [the petitioner]."

The courses that make up the proposed training program will be taught by four different instructors, one instructor per course. The total number of classroom hours for the proposed training program is 3,785. The training program, as submitted, does not mention on-the-job training nor does it allocate time for such training.

According to the proposed training program, The Power of Kabbalah (level I) will be taught by [REDACTED], Monday through Friday, for 25 weeks, for a total of 625 classroom hours. The Power of Kabbalah (level II) will be taught by [REDACTED] Monday through Friday, for 39 weeks, for a total of 1,560 classroom hours. The Power of Kabbalah (level III) will be taught by [REDACTED], Monday

through Friday, for 38 weeks, for a total of 1,520 classroom hours. The Zohar will be taught by [REDACTED], Monday through Friday, for 2 weeks, for a total of 80 hours.

On June 26, 2007, the director requested evidence from the petitioner including a detailed description of the training to be provided and evidence that the training cannot be obtained in the Philippines. In response to the director's request for evidence, the petitioner submitted printouts from the petitioner's website containing information about Kabbalah, A Society of Souls, and Integrated Kabbalistic Healing. However, the petitioner did not explain how this information relates to the training program. The petitioner also included a booklet listing the classes and events for the Kabbalah Centre Los Angeles from May to August 2007. This booklet lists dates, times, and instructors for the same courses included in the proposed training program. However, the booklet lists the three "The Power of Kabbalah" courses as weekly evening courses, with each course lasting 10 weeks. The booklet also includes a weekly Zohar course offered in the evening. In addition, the booklet includes information about "The Kabbalah Worldwide Classroom" available at the petitioner's website and which includes all of the courses offered in the proposed training program.¹

The director denied the petition on September 29, 2007. 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 the proposed training is not available in the beneficiary's country. 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 evidence (RFE), the petitioner included a heading entitled "Availability of Training in Alien's Home Country." Under this heading the petitioner listed "Exhibit A" for publications and "Exhibit B" for organization. However, the petitioner did not explain how these exhibits relate to the training program or how they demonstrate that the training is unavailable in the beneficiary's country.

On appeal, the petitioner states the following:

¹ See <http://tv.kabbalah.com> (accessed March 7, 2008). The petitioner's website offers the courses in the proposed training program in both a web video and MP3 format for a fee. In its description of "The Power of Kabbalah (level I)," the website states that "whether you've been studying for ten weeks, ten months, or ten year, this six week course makes sure you really understand and live the key kabbalistic technology that can unquestionably change your life." Therefore, it appears as though the petitioner believes this video course is complete and is able to explain things in such a manner that a novice will obtain all necessary information. Each of the "The Power of Kabbalah" courses on the website is comprised of six classes.

In the training program, we will introduce the goals and policies of [the petitioner]. [The beneficiary] will be exposed to various contacts to observe and to have on-the-job supervised training. This will enable the trainee to know every aspect of our organization. The training program, which also involves exposure to aspects of our company's administrative and marketing set-up, may only be obtained in our office in the United States. Further, this will ensure that the company's central policies and goals are maintained and respected once [the beneficiary] takes on a centre role at our future centre affiliates abroad.

Throughout our training program, the trainee will be exposed to [the] most updated system and technology. Exposure to this level of diversity and technology is not possible in the Philippines, the trainee's home country.

This information was not included in the training program submitted by the petitioner. The proposed training program submitted lists four courses and focuses on the study of Kabbalah itself. The proposed training program does not mention on-the-job training for a centre manager position, nor does it mention exposure to systems and technology. Again, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Furthermore, according to the booklet listing the classes and events for the Kabbalah Centre Los Angeles and the petitioner's website, the courses listed in the proposed training program are available in both a web video and an MP3 format on the petitioner's website. It is unclear as to why the beneficiary would be unable to access this online material in the Philippines.

The petitioner has submitted no evidence establishing that the training offered in this program is not available in the Philippines. The record contains no evidence, other than the assertions of the petitioner, that the type of training offered in the proposed training program is unavailable in the beneficiary's home country. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Accordingly, the petitioner has not satisfied the criteria at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

The director also found that the petitioner had failed to demonstrate that its proposed training program does not deal in generalities. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a proposed training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Although the petitioner's proposed training program includes a schedule for classroom hours and lists the instructor for each course, the petitioner does not provide information as to the material that each course will cover, whether the course is live or a recording, or how the beneficiary will be evaluated throughout the training program. The AAO notes that the director afforded the petitioner the opportunity to supplement the record with a more detailed description of its proposed training program in her June 26, 2007 request for additional evidence. In response, the petitioner submitted information about Kabbalah

and printouts from its website. Among the copies submitted, the petitioner included information about Integrated Kabbalistic Healing (IKH). The training program materials do not mention courses in IKH or that the beneficiary will be trained as an IKH healer. The petitioner did not explain how the information provided, including the information regarding IKH, relates to the proposed training program.

The information in the record of proceeding provides CIS with little indication of what the beneficiary will actually be doing on a day-to-day basis. While the petitioner is certainly not required to provide a daily itinerary for a two-year program, the petitioner has provided little information beyond a vague, generalized description.

Accordingly, the petitioner has not satisfied the criteria at 8 C.F.R. § 214.2(h)(7)(iii)(A).

Beyond the director's decision the petitioner has failed to demonstrate that the proposed training program will prepare the beneficiary for a career abroad. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to submit a statement which describes the career abroad for which the training will prepare the alien.

At page 2 of the petitioner's appeal brief, the petitioner states that "upon completion of the training program, [the beneficiary] will return to the Philippines, where he will serve as the consultant, in-charge of our services at our future affiliate centre abroad." 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, or that it is currently operating, 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 the reasons set forth in the preceding discussion, the AAO finds that the petitioner has failed to overcome the director's denial of the petition. Accordingly, the AAO will not disturb the director's denial of the petition.

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.