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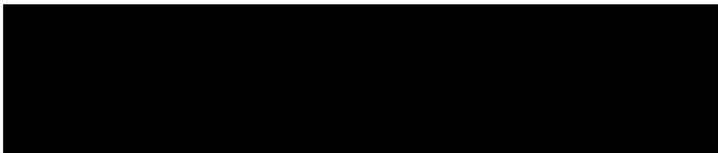
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FILE: WAC 08 006 51217 Office: CALIFORNIA SERVICE CENTER Date: **NOV 03 2008**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

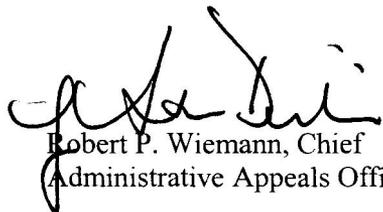
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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 wholesale importer and distributor of textile, printed textile, and garment production packaging that seeks to employ the beneficiary as a trainee for a period of 24 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 notice of intent to deny the petition; (3) the petitioner's response to the director's notice; (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 establish that it has the physical plant and sufficiently trained manpower to provide the proposed training; (2) that the petitioner had failed to establish that the proposed training is unavailable in the beneficiary's home country; and (3) that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

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 his September 27, 2007 letter in support of the petition, previous counsel stated the following:

[The petitioner has been in the] textile and garment business for more than 20 years. The company has a design department with several CAD artists that are designing new prints for textile[s] and for production which will be imported from countries like China, Taiwan, Korea and others. In addition to the textile[s], the Company has a Garment Packaging Production Division which manufacturing garment through overseas factories [sic]. . . .

[The petitioner's] headquarters is located in Los Angeles [sic]. It also has a Sales Office in New York and Production & Quality Control/Traffic employees in China and Taiwan.

In the program outline submitted in response to the director's request for additional evidence, the petitioner stated the following with regard to the goals and objectives of the proposed training program:

The program is designed to provide a range of specialized professional training in the field of coordinating, managing and administering operations, accounts and activities of [the petitioner]. . . .

The goal is to equip the trainee with the necessary expertise to fulfill the position of Production Coordinator and to prepare her to successfully lead the future international expansion of [the petitioner]. Apart from training in Production, she will also be trained in the various aspect[s] of international trade to ensure compliance with all applicable laws and regulations relating to the importation and exportation of textile[s] and garments.

The training is detailed and comprehensive and involves direct academic and technical instruction and exposure to various key elements of our management and Production practices for supervised practical training.

The petitioner explained that the proposed training program would last 24 months and be composed of four phases: (1) Introduction to the Petitioner; (2) Overview of Garment Production; (3) Post Production; and (4) Traffic Management/Operations.

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 it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees.

In the training program outline, the petitioner stated that the beneficiary would be supervised by three individuals, and their subordinates: (1) [REDACTED]; (2) [REDACTED] and (3) [REDACTED]. However, in his February 4, 2008 letter, previous counsel stated that the beneficiary would be supervised by one individual: [REDACTED], the petitioner's C.E.O.

In her March 20, 2008 denial, the director stated the following:

It seems that if the petitioner's CEO will be the only trainer providing full-time training, it would be difficult to maintain the petitioner's business for the duration of the 24-month training program. . . .

On appeal, newly-retained counsel states that previous counsel erred in providing the name of [REDACTED] as the sole trainer, and that the three individuals named in the program outline [REDACTED] and [REDACTED]), and their subordinates, would in fact supervise the beneficiary. However, the AAO notes that these individuals occupy important positions within the petitioner's organization, and counsel does not explain how those individuals' regular duties will be accomplished while they are providing training to the beneficiary over the course of 24 months.

Nor has the petitioner submitted any information regarding the qualifications of any of these individuals to provide the training, or explained which parts of the program they will supervise. Without such information, the AAO is unable to make a determination that the petitioner has sufficiently trained manpower to provide the training specified in the petition. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

The director also found that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. The AAO disagrees. 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.

The petitioner has submitted several letters, including letters from Filipino governmental organizations, attesting to the unavailability of similar training in the Philippines. The AAO finds the petitioner's submissions reasonable and withdraws the director's decision finding otherwise.

The director also found that the petitioner had failed to adequately describe the career abroad for which the training will 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.

In his February 4, 2008 response to the director's request for additional evidence, prior counsel stated the following:

The Petitioner currently has Production & Quality Control/Traffic presence in the Philippines . . . As a trainee at the U.S. facility, [the beneficiary] will travel to its business in the Philippines in an effort to become familiar with their operations and key personnel. This is hugely significant as it will establish a relationship between [the beneficiary] and the company's overseas business and will prove essential to the expansion of [the petitioner's] business to include the Philippines. . . .

The goal is to equip the trainee with the necessary expertise to fulfill the position of Quality Control Traffic Coordinator and prepare her to successfully lead the international expansion of [the petitioner] from overseas. . .

In her March 20, 2008 denial, the director stated that the petitioner had submitted no evidence to establish that there is in fact a career abroad for the beneficiary.

In its May 14, 2008 letter, the petitioner states that prior counsel erred in stating that it has operations in the Philippines. Rather, the petitioner states, it only has representatives in China and Taiwan. The petitioner states that it is currently seeking representation in the Philippines. The petitioner also states the following:

[P]rior to undergoing a significant expense in opening a third office in the Philippines, we have sought to train [the beneficiary] for the next two years in all facets of our business so that her transition in acting as our representative in the Philippines can be achieved successfully.

Counsel states the following in his appellate brief:

[U]pon the completion of her time in the United States, [the beneficiary] will be relocated to the Philippines where she would then operate as a representative of [the petitioner].

The petitioner has not adequately described the career abroad for which the training will prepare the beneficiary. It has failed to establish that the career abroad it has described for the beneficiary in fact exists. It has failed to establish that there is in fact a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program.

The record is clear that the goal of the proposed training program is for the beneficiary to return to the Philippines as a representative of the petitioner at its conclusion. The petitioner, however, has not established that there exists a setting in which the beneficiary would be able to utilize her newfound 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 setting in which the beneficiary would utilize his skills would be for the petitioner in the Philippines, the petitioner must document that it is currently operating in, or has actual plans to commence operations in, the Philippines upon completion of the training. Without such information, there is no evidence of a career abroad for the beneficiary. The record, as presently constituted, contains no documentary evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any documentary evidence, beyond its own assertions, 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) or 214.2(h)(7)(ii)(B)(4).

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 two additional reasons.

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 information contained in the record of proceeding remains 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, according to the program outline the second phase of the proposed training program would last six months. While the petitioner provides a list of objectives to be learned, it is unclear what the beneficiary would actually be doing while in the classroom or while receiving on-the-job training. Nor is it clear who would be providing this portion of the training program, as the petitioner has not provided a breakdown of which phases of the training program the three instructors would supervise. The petitioner's description in the program outline of how the beneficiary would spend this time consists of two sentences and five bullet-pointed summaries that total less than one page. The third phase of the proposed training would last nine months. The petitioner's description of how this time will be spent is very minimal and covers less than half of one page. Again, the evidence provided leaves little indication as to what the beneficiary will actually be doing during this time, and it is unclear who would be supervising the beneficiary during this portion of the training.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. Objectives are provided, but lists of objectives are not substitutes for descriptions of how those objectives are to be accomplished. The petitioner has failed to submit sample lesson plans or other evidence that would clearly explain what the beneficiary will actually be doing while participating in the training program.

Although the petitioner offers some additional detail on appeal, it does not expand the program outline contained in the record in any meaningful way. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every day, of the training program. However, it must explain how the beneficiary will actually be spending her time while participating in the training program; generalized objectives are insufficient. Here, 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. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of this petition. For this additional reason, the petition may not be approved.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). In finding that the petitioner has failed to adequately describe the structure of the proposed training program, the AAO incorporates here its previous discussion regarding the petitioner's vague and generalized description of the training program. Again, the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every day, of the training program. However, it must explain how the beneficiary will actually be spending her time while participating in the training program. Here it has failed to do so. In finding that the petitioner has failed to adequately describe the supervision that will be provided, the AAO incorporates here its previous discussion of the deficiencies in the petitioner's description of who would be supervising the beneficiary. Again, the petitioner's simple provision of three names, for a 24-month program, is insufficient. The petitioner has failed to state which of these individuals would supervise which parts of the training program. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

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.