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U.S. Citizenship
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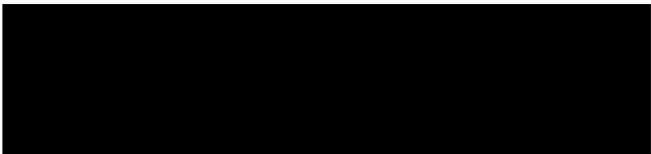


FILE: WAC 07 224 52690 Office: CALIFORNIA SERVICE CENTER Date: **NOV 03**

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

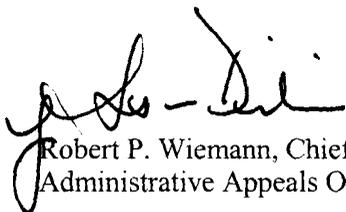
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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 an investment, real estate management, and restaurant company that seeks to employ the beneficiary as management accountant 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 (NOID); (3) the petitioner's response to the director's NOID; (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 the proposed training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; (2) that the petitioner had failed to demonstrate that the proposed training is unavailable in the beneficiary's home country; and (3) that the petitioner had failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career abroad.

On appeal, newly-retained 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 his July 9, 2007 letter of support, previous counsel stated the following:

[The petitioner] is a California corporation that administrates [sic] a private real estate portfolio that includes hotels, retail shopping centers, wholesale distribution centers, industrial sites, office buildings, restaurants [sic] buildings, mixed use development projects, condominiums, apartments and single family homes, beachfront time shares and raw land.

With regard to why the petitioner is offering the proposed training program, previous counsel stated the following:

Presently [the petitioner] is rapidly expanding. The company is planning to open an office in Asia, possibly in the Philippines, and will need more trained individuals to work in its offices abroad.

The petitioner explained that the proposed training program would consist of four phases: the first phase, entitled "Introduction to [the petitioner]," would last ten months; the second phase, entitled "Service Training," would last four months; the third phase, entitled "Management of Personnel," would last four months; and the fourth phase, entitled "Training in Business Development and Entrepreneurship," would last six 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 the proposed training is not on behalf of a beneficiary who 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 her June 2, 2008 denial, the director stated the following:

The record indicates that on March 15, 2007 the beneficiary received a Bachelor's Degree in Industrial Engineering from The University of the Assumption in the Philippines. Absent a detailed description of the beneficiary's employment history, the beneficiary may already substantial training and expertise in the proposed field of training.

On appeal, newly-retained counsel states that the beneficiary does not possess a bachelor's degree in industrial engineering, and that the beneficiary "has no previous exposure to industrial property management." Counsel submits evidence to establish that the beneficiary has previous work experience as a loan officer, a procurement manager, and a quality control manager.

The AAO agrees with counsel's analysis. While the record does contain the beneficiary's transcript from the University of the Assumption, it does not indicate that the beneficiary graduated with a degree. Rather, it appears that she pursued three years of study toward a degree in industrial engineering. The AAO agrees with counsel that the March 15, 2007 "degree" referenced by the director is the date the

transcript was printed, not the date a degree was issued. Although the beneficiary did pursue three years of study toward a degree in industrial engineering, it is not clear that such coursework is relevant to a career in property management. Nor does the AAO find that the beneficiary's prior work experience constitutes "substantial training and expertise" in the field of property management. The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

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

In his December 19, 2007 response to the director's notice of intent to deny the petition, previous counsel stated the following:

[The beneficiary] will travel to [the petitioner's] [e]nterprises located in Hawaii, Florida[,] and Tennessee in an effort to become familiar with [the petitioner's] operations and key personnel. This is hugely significant as it will establish a relationship between [the beneficiary] and the company's employees and business partners and will prove essential to the expansion of [the petitioner's] business overseas. Such training could not be obtained anywhere else as [the petitioner] is here in the U.S. and all business operations are currently conducted in the U.S.

The Petitioner's services are unique and their exclusive and creative techniques cannot be taught anywhere else in the world. . . .

Counsel states the following on appeal:

The training program states Petitioner's goal to familiarize Beneficiary of Petitioner's corporate structure, culture, specific corporate operations[,] and facilities. It described that the training program is company-specific and requires that it be conducted in the U.S. where Petitioner's operation and property interests are all located. . . .

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, however, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.¹ Moreover, the petitioner in this particular case

¹ The AAO bases its finding in this regard on the sole basis of the fact that the beneficiary would be learning about the petitioner's unique business practices. It specifically does *not* enter a finding that a knowledge of general principles of property management cannot be obtained in the Philippines. For example, the De La Salle Professional Schools, located in the Philippines, offer a post-graduate diploma in property management. See <http://www.dlsp.s. Edu/ph/index.php?cat=67&id=34> (accessed October 24,

has submitted evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another facility. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in the Philippines, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Therefore, the petitioner has overcome this ground of the director's denial, and that portion of the director's decision finding otherwise is withdrawn.

The director found that the petitioner had failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career abroad. 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. As noted above, the AAO has found the petitioner in compliance with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Again, the question to be addressed when attempting to satisfy these two criteria 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.

However, in the present case and as noted above, the entire reason for creation of the training program 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 her newfound knowledge (the knowledge that cannot be obtained in the Philippines) will be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge.

The petitioner has asserted that the beneficiary will aid 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 her 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

2008). The AAO also notes the existence of many property management companies in the Philippines, and presumes that at least some of their property managers received training in the Philippines; *see, e.g.*, <http://www.ayalaproperty.com/ph> (accessed October 24, 2008) (Ayala Property Management Corporation which, according to its website, has a 20-person management team); <http://www.colliers.com/Markets/Philippines/about/AboutUs> (accessed October 24, 2008) (Colliers International which, according to its website, has a staff of 50, as well as 150 on-site property management staff); http://www.cpmi.com.ph/index_frame.htm (accessed October 24, 2008) (Centuries Property Management which, according to its website, manages 47 buildings and is the largest property management company in the Philippines); and <http://www.fpdglobal.com> (accessed October 24, 2008) (FPD Integrated Services, Inc.).

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)). Counsel elects not to respond to this portion of the denial on appeal. Thus, the petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 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. Goals and objectives are presented, but lists of goals and objectives are not substitutes for descriptions of how those goals and objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing during this time.

For example, the first phase of the proposed training program would last ten months, and be split into one four-month phase and one six-month phase. The petitioner's description of how the beneficiary would spend the four-month period of time consists of a four-sentence introduction, and a one-sentence description. The petitioner's description of how the beneficiary would spend the six-month period of time consists of a four-sentence introduction, and a brief, summary checklist. The third phase of the training program would last four months, and the petitioner's description of what the beneficiary would be doing during this time consists of a brief summary. Nor is any other evidence submitted, such as sample lesson plans or copies of reading materials, which would assist the AAO in determining how the beneficiary would be spending her time. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every single day, of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing for much of the proposed training program. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). **For this additional reason, the petition may not be approved.**

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition in which the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). In his December 19, 2007 response to the director's notice of intent to deny the petition, previous counsel stated that the petitioner's president "will be the sole trainer for the program."

However, it is unclear how the petitioner's president will be able to conduct six hours of classroom training followed by three hours of supervised training, every day, for a period of twelve months. It is unclear to the AAO how he would be able to attend to his other duties during this time. Moreover, it is unclear to the AAO how the business will be able to function without the president's services during this time as, with only 16 employees, it is a relatively small business. The petitioner has failed to establish that it has the manpower to provide this training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition. **For this additional reason, the petition may not be approved.**

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.