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U.S. Citizenship  
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Services



D4

FILE: WAC 08 081 50065 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2008

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

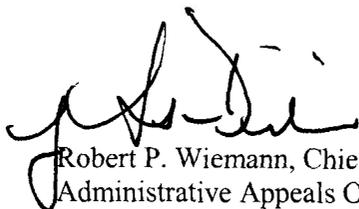
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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 an international trading and stone fabrication importer and exporter that seeks to employ the beneficiary as a trainee for a period of 18 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 first Form I-290B and supporting documentation, submitted as a motion to reopen or reconsider; (6) the director's dismissal of the motion; and (7) the petitioner's second Form I-290B and supporting documentation, submitted as an 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 the petitioner had failed to demonstrate that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

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 5, 2008 letter of support, the petitioner stated the following:

[The petitioner], established in 1995, is an importer & distributor of Natural Stones – specializing in Jerusalem Stone (limestone) based in North Hollywood, CA.

We can provide a variety of high quality natural stones that would meet all architectural and design needs. We have stocks of a full line of Jerusalem stone in tiles, slabs, versailles patterns[,] and veneer stones with a variety of finishes that are ideal interior and exterior including cut-to-size residential/commercial projects. We proudly works [sic] with leading developers, architects, designers[,] and builders. . . .

With regard to why it is offering the training program, the petitioner stated the following:

[The reason for the proposed training program is] to develop highly qualified individuals to fill in key positions at [the petitioner] and its branches and affiliates abroad. This training was specifically designed to provide [the] trainee with extensive direct exposure to [the] import and export industry. . . .

In the program outline submitted at the time the petition was filed, the petitioner explained that its proposed training program would consist of five phases: (1) General Orientation; (2) Operations and Procedures; (3) Importing and Exporting; (4) Business Strategies; and (5) Final Evaluation.

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. The AAO agrees. 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 letter of support, the petitioner stated the following with regard to supervision:

This training program is the brainchild of the President . . . To ensure that his vision for the training program is followed, the President has appointed the Human Resources Manager to supervise the training.

In cooperation with other members of the staff and industry experts, the President has handpicked Instructors and/or trainers to implement the curriculum that was developed. . . .

In his March 28, 2008 response to the director's request for additional evidence, counsel stated the following:

Petitioner shall apportion the time between the President, [REDACTED], and its full time HR Manager, [REDACTED] and its Management Analyst, [REDACTED] and [REDACTED] will each designate their subordinates to personally train and supervise the herein Alien-Beneficiary for the proposed Training Program.

Counsel also stated that the petitioner had hired a “training consultancy firm,” which would provide two additional trainers to provide training to the beneficiary.

In her May 3, 2008 denial, the director stated, in pertinent part, the following:

The petitioner notes that [REDACTED] and [REDACTED] “. . . will designate their subordinates to personally train and supervise the herein Alien-Beneficiary for the proposed Training Program.” The petitioner, however, has not indicated who Ms. [REDACTED] and [REDACTED] subordinates are. Nor has the petitioner provided evidence of the subordinates’ qualifications.

Furthermore, it is unclear whether [REDACTED] and [REDACTED] will be able to provide the proposed training and perform the duties normally associated with their positions. The petitioner has indicated that both individuals are employed full-time in their respective positions. The petitioner claims that training duties are normally associated with both positions and with the assistance of two independent training consultants the petitioner submits that “. . . no untoward disruption of duties . . . will possibly occur. . .” The record, however, does not support the petitioner’s contention. [REDACTED]’s resume (submitted with the petitioner’s response) does not indicate training as a regular part of her job duties . . . USCIS also notes that the record contains no description of the work normally performed by [REDACTED] . . .

In his motion to reopen and reconsider, received at the service center on June 5, 2008, counsel stated the following:

Petitioner respectfully reiterates that at the onset of the filing of this I-129 Petition, it has categorically stated and shown that it has a number of trainers [sic] who are all capable and more than sufficient to train the herein Beneficiary. . . .

\* \* \*

The Service failed to appreciate, notice and give weight that indeed, Petitioner has a separate Training Division under the HR Department that will cater to the conduct of this training program. . . .

\* \* \*

[I]t is indeed a clear showing that in here Service’s [sic] erred in reaching such a conclusion, where in fact, it is very evident from the twice [sic] submitted ORGANIZATIONAL CHART the names of the subordinates of [REDACTED] and [REDACTED]. There **was no precise and clear requirement** from the Service to indicate the names and qualifications of their subordinates, and moreso, it is entirely irrelevant since they are not the primary trainers [sic] in this training programs [sic] [emphasis in original]. Had the Service referred to the Organizational Chart, there is a clear showing therein of the subordinates['] names to satisfy such wanton requirement.

To satisfy the USCIS and to refute the Service claims, Petitioner herein submits the **Resumes of the Subordinates of [REDACTED] and [REDACTED]** [emphasis in original]. . . .

The AAO disagrees with counsel's statement that the director's concern regarding the qualifications of the subordinates of [REDACTED] and [REDACTED] was "irrelevant" and "wanton." As noted previously, counsel stated in his March 28, 2008 response to the director's request for additional evidence that [REDACTED] and [REDACTED] will each designate their subordinates to personally train and supervise the herein Alien-Beneficiary for the proposed Training Program." As these subordinates are the individuals who will, in counsel's words, "personally train and supervise" the beneficiary, the director's concern regarding those individuals' qualifications to provide the training pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(G) was warranted. Accordingly, the AAO turns next to an examination of whether the record indicates that these subordinates are qualified to "personally train and supervise" the beneficiary.

The record contains the resumes of three subordinates who will "personally train and supervise" the beneficiary: (1) [REDACTED] (2) [REDACTED] and (3) [REDACTED]. According to her resume, [REDACTED] graduated from De La Salle University, in the Philippines, in 2004 with a degree in communication arts, "majoring in film, broadcasting, web design, print production & photography." She has worked for the petitioner as an office manager and human resources assistant since 2007. Her qualifications to "personally train and supervise" the beneficiary in a training program "designed to provide [the] trainee with extensive direct exposure to [the] import and export industry" are unclear. Given that the training program is centered around the petitioner's own methods of conducting business, her relatively short period of employment with the petitioner would appear to further diminish her qualifications to "personally train and supervise" the beneficiary.

According to her resume, [REDACTED] graduated from Reseda High School in 2001 and has worked for the petitioner as a records custodian since August 2001. As was the case with [REDACTED] qualifications to "personally train and supervise" the beneficiary in a training program "designed to provide [the] trainee with extensive direct exposure to [the] import and export industry" are unclear.

Finally, the AAO turns to the resume of [REDACTED]. Mr. [REDACTED] possesses a degree in civil engineering and, while the resume does not state specifically when he began working for the petitioner, his most recent position before accepting his role for the petitioner appears to have lasted from 2005 until 2007, so the AAO presumes he has worked for the petitioner since 2007. Again his qualifications to "personally train and supervise" the beneficiary in a training program "designed to provide [the] trainee with extensive direct exposure to [the] import and export industry" are unclear from this resume. As was the case with [REDACTED], her relatively short period of employment with the petitioner would appear to further diminish her qualifications to "personally train and supervise" the beneficiary.

The record, therefore, does not indicate that any of these individuals are qualified to "personally train and supervise" the beneficiary. The director's concerns, therefore, were warranted, and the petitioner has failed to overcome such concerns. The petitioner has failed to establish that it has sufficiently trained

personnel to provide the training specified in the petition.<sup>1</sup> The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition.

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 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. Although the petitioner submits a 97-page training manual, it is unclear how the petitioner will stretch this material to cover 18 months of instruction. The training manual consists primarily of reading material, which the petitioner has not related to the daily functioning of the training program in any meaningful way. For example, it is unclear whether the beneficiary will read this material during the classroom portion of the training, or whether he will be expected to have read it before arriving to class. The submission of reading material does not aid the AAO in determining how the beneficiary would actually be spending his time. Further, while goals and objectives are presented, 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. 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.

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.

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<sup>1</sup> The AAO accepts the petitioner's submissions regarding its physical premises. It finds that the petitioner has established that it has the physical plant to provide the training specified in the petition, and withdraws that portion of the director's decision finding otherwise.