

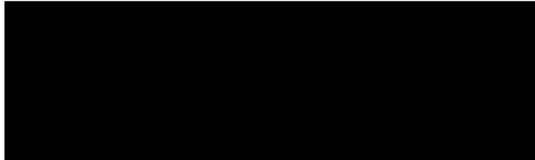
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**U.S. Citizenship
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FILE: WAC 08 800 03460 Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2008

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

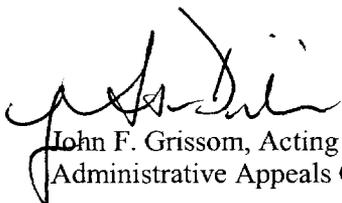
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.


John F. Grissom, Acting 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 sustained. The petition will be approved.

The petitioner is a cutting horse operation 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 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 five grounds: (1) that the petitioner had failed to establish that the training is unavailable in the beneficiary's home country; (2) that the petitioner had failed to establish that there exists a career abroad for which the training will prepare the beneficiary; (3) that the petitioner had failed to establish that the proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; (4) that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program; and (5) that the petitioner had failed to establish that the proposed training does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

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 December 31, 2007 letter of support, the petitioner stated the following:

[The petitioner] was established in 1992 by [REDACTED] a nationally acclaimed cutting horse champion, horse trainer, and instructor. At a large ranch in Rio Vista, Texas, [the petitioner] breeds, trains, and shows cutting horses for competition and sale. Its training and riding operations have been developed with an uncompromising commitment to the safety and health of the horse and in pursuit of participation at the forefront of virtually every aspect of the cutting horse industry.

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

Under the direction of [REDACTED] the ever-increasing success of the Ranch has been the result of constant efforts to provide optimal conditions for every aspect of [the] breeding, raising, promoting, showing, and selling of cutting horses. In recent years, [the petitioner] has taken steps to expand into Australia. Indeed, our organization has already purchased a number of broodmare horses, begun to advertise our stud services, participated in competitions, and commenced training clinics in Australia. By training one or two key personnel to assist us in Australia, we hope to establish a second facility in that country and become one of the first Cutting Horse operations with established business programs in both the United States and Australia. Such an expansion effort (which appears to be the clear trend in our industry) will give us a significant advantage over our competition and enable us to maintain our dominant position in the industry.

The petitioner explained that its proposed training program would consist of eighteen modules: (1) Orientation and Introduction to the Training Program; (2) Equine Anatomy and Physiology; (3) Equine Psychology and Behavior; (4) Equine Nutrition and Metabolism; (5) Equine Reproduction; (6) Infectious Diseases of the Horse; (7) Equine Pharmacology and Emergency Care; (8) Equine Conformation and Locomotion; (9) Equine Complementary Medicine; (10) Advanced Instruction on Medical and Farrier Needs of the Cutting Horse; (11) Cutting Horse Competition; (12) Advanced Cutting Horse Competition; (13) Applied Equine Appointments; (14) Conditioning and Training Programs; (15) Advanced Methods of Equine Training for Competition; (16) Equine Administration Activities in the Competitive Cutting Horse Industry; (17) Equine Farm Agronomics; and (18) Equine Business Management.

The director found that the petitioner had failed to establish that the proposed training could not be obtained in Australia, the beneficiary's home country. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) 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.

The director raised this issue in his February 7, 2008 request for additional evidence. In its April 28, 2008 response, the petitioner outlined the unique qualifications of the individuals who would provide the training, and also stated the following:

Since we are seeking to employ [the beneficiary] as our representative in Australia at the conclusion of this training program, it is imperative that he be trained in [the petitioner's] specific organizational practices and procedures. Consequently, we have sought to place [the beneficiary] in an advanced and highly accelerated training program. . . .

We have worked carefully to develop a structured training program, which is only offered at our facilities that are located in the United States . . . It is imperative that our representatives be acquainted with our U.S. operations to ensure that they are well-versed in our organization's practices and procedures when representing our business abroad. . . .

[The petitioner] is a key player in the U.S. cutting horse industry and our provision of training individuals in the U.S. enables them to gain a greater understanding as to how both our U.S. operations currently play a role in the worldwide cutting horse industry.

Furthermore, our training program is conducted at our facilities in Rio Vista, Texas (approx. 55 miles from Dallas/Fort Worth and approx. 40 miles from Weatherford, Texas), which enables us to provide the best possible training to the beneficiary. Weatherford, Texas is world renowned for being the Cutting Horse Capital of the World and Texas has more registered cutting horses than the entire country of Australia . . . Many of the world's best cutting horse professionals have gravitated to Weatherford and surrounding areas for precisely this reason. . . .

[W]hile [the beneficiary] might be able to obtain general horse knowledge at a horse operation in Australia, it would not be at all similar to the training he would receive at our organization, in that it would not cover our specific practices or procedures[,] nor would it include cutting specific industry training in a highly specialized sport that began in and is most developed in the U.S.

Indeed, it is precisely because of our unique style of operations and because of our location in the center of the cutting horse industry in Northern Texas that we are able to provide our inimitable training program in the United States. . . .

Since we do not currently have operations in Australia, the only way that the beneficiary could participate in our training program is to complete the offered training in the United States. . . .

The AAO notes that 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, the primary reason for creation of the training program is to train the beneficiary on the petitioner's particular business practices. The petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not

be obtained at another equine facility. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in Australia, 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). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The director also found that the petitioner had failed to establish that the beneficiary will use the training for employment abroad. The AAO disagrees. 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 her May 15, 2008 denial, the director stated the following:

Since the petitioner has not established that there is presently a bona-fide career abroad in Australia to which the beneficiary would return, the petitioner's statements are merely speculative in nature. Furthermore, the petitioner has not submitted sufficient evidence to establish that [the petitioner] has an actual business operation in Australia.

The AAO disagrees with the director's analysis, and finds that the petitioner has submitted sufficient evidence to demonstrate that it is in the process of setting up operations in Australia. The petitioner has made assertions that it is setting up operations in Australia and presented documentary evidence to back its assertions. For example, the petitioner stated the following on the Addendum to the Form I-129:

Indeed, [the petitioner] has already purchased a number of broodmare horses, begun to advertise its stud services, participated in competitions, and commenced training clinics in Australia. . . .

In its April 28, 2008 response to the director's request for additional evidence, the petitioner stated the following:

Besides our professional training and breeding business, we also compete in cutting horse competitions around the U.S. and Australia. We also conduct 1 and 2 day clinics in Australia on various aspects of cutting such as training techniques, showmanship, and horsemanship skills.

We also have ownership in the stallion "Lectric Playboy." This stallion won the title of NCHA World Champion Stallion . . . Two years ago, we completed the lengthy process to have Lectric's semen collected, frozen, and shipped to a certified breeding facility in Australia in order to open up additional business opportunities. . . .

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 Australia, the petitioner must document that it actually has plans to commence operations in Australia. The AAO agrees with the petitioner and finds that the petitioner has satisfied its burden. The petitioner here has submitted documentation of its activity in Australia and, when coupled with such documentary evidence, the AAO finds its further assertions reasonable. The AAO finds that, in this particular case, the petitioner has established that the beneficiary will use the training for employment abroad, and finds that the petitioner

has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

The director also found that the petitioner had failed to establish that the proposed training program 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.

The director stated the following in his May 15, 2008 denial:

The beneficiary will receive training that is exclusive to the petitioner[']s methods of operation. The petitioner states that in order to apply U.S. techniques to enhance their prospective business abroad, the beneficiary would be required to train at the petitioner's U.S. center of operations. The petitioner explains that their cutting horse facility is a renowned leader in methods of training in the cutting horse industry.

The record indicates that the beneficiary was admitted to the United States as an exchange visitor (J-1) from May 10, 2006 through November 9, 2007. He was sponsored by "Communicating for Agriculture" and received practical training Horse Husbandry/Equine Science and Management. . . .

It is conceded that practical day-to-day experience will increase proficiency in any line of endeavor. However, the statute involved here is one that contemplates the training of an individual rather than giving him further experience by day-to-day application of his skills. . . .

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. The petitioner has submitted an extensively detailed description its J-1 training program, as well as a description of its proposed H-3 training program, which is also extensively detailed. 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 finding otherwise.

The director also found that the petitioner had failed to adequately 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). The AAO disagrees. The petitioner has provided extensive information regarding its proposed training program. It has explained how the beneficiary would be spending his time while participating in the proposed training program, and it has provided sample reading materials, lesson plans, plans for evaluation, as well as extensive documentation regarding the qualifications of the individuals who would provide the training. The AAO finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). Accordingly, the AAO withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner has failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO disagrees. Again, the AAO notes the extensive documentation in the record regarding the proposed training program. It has explained how the beneficiary would be spending his time while participating in the proposed training program, and it has provided sample reading materials, lesson plans, plans for evaluation, as well as extensive documentation regarding the qualifications of the individuals who would provide the training. The AAO finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A). Accordingly, the AAO withdraws that portion of the director's decision finding otherwise.

The petitioner has overcome each ground of the director's decision and, accordingly, the director's decision is withdrawn. The petition will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.