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U.S. Citizenship  
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FILE: EAC 08 036 51581 Office: VERMONT SERVICE CENTER

Date: **NOV 25 2008**

IN RE: Petitioner:  
Beneficiary:



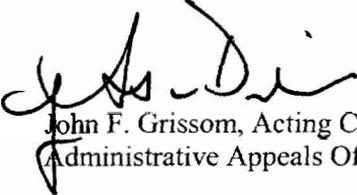
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.

  
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 dismissed. The petition will be denied.

The petitioner is a church that seeks to employ the beneficiaries as trainees for a period of five months. The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker trainees 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 five grounds: (1) that the petitioner had failed to establish that the proposed training program is primarily training in nature; (2) that the petitioner had failed to establish that the proposed training is not available in the beneficiaries' home country; (3) that the petitioner had failed to describe the benefit that will accrue to the petitioner for providing the training; (4) that the petitioner had failed to establish that the beneficiaries would not engage in productive employment beyond that necessary and incidental to the proposed training; and (5) that the petitioner had failed to establish that the beneficiaries would not be placed in the normal operation of the petitioner's business.

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 its December 16, 2007 response to the director's request for additional evidence, the petitioner stated the following:

[The petitioner] is a Christian church established in 1973. We have offered this five-month College Campus Ministry Training Program to our affiliated Churches throughout the world since 1998. . . .

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

The purpose of the College Campus Ministry Training Program is to equip members of our affiliated churches to strengthen and enlarge their Local Church by establishing an effective college campus ministry carried out through a team of missionaries on their respective campuses. Since 1998, 58 affiliated Local Churches have sent teams of approximately six to eight trainees to our program. During the past 10 years, 463 trainees, including 145 international trainees from 16 foreign countries, have participated in our program. All the trainees have returned to their respective sending churches to establish and serve on campus missionary teams there.

In its November 16, 2007 letter of support, the petitioner described the structure of the proposed training program. The beneficiaries would spend 55 hours per week participating in the training program. The beneficiaries would spend three hours per week in "personal time with the Lord"; three hours per week reading and studying the Bible; five hours per week "Preaching the Gospel/Visiting"; fifteen hours per week "Nourishing/Shepherding new/young believers"; and five hours per week "Teaching and perfecting new/young believers." In addition, the beneficiaries would spend 24 hours per week attending nine meetings: (1) Holy Communion; (2) Prophesying; (3) Prayer; (4) Practical Service; (5) College; (6) Home; (7) Coordination; (8) Bible Study; and (9) Fellowship.

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 proposed training program is not primarily training in nature. The AAO agrees. In his December 31, 2007 denial, the director stated the following:

[T]he evidence submitted establishes that you have had a significant number of workers pass through your college ministry program. It does not establish that the program is training in nature. While you have submitted evidence to establish a 1-3 week orientation program, the remainder of time in the training program does not include actual instructor/student classroom training in the traditional sense intended by the classification. . . .

USCIS is not satisfied that the program is intended for training but rather is intended to give church employees experience spreading religious beliefs. Most, if not all[,] of the time for each employee will be spent productively working with college students sharing religion and developing the Christian faith. The syllabus submitted spends more time

productively teaching faith to college students rather than teaching the prospective employees how to work within the capacity of religious workers on a college campus. . . .

\* \* \*

Very little, if any[,] time will be spent in a training environment where the employee is receiving direct classroom instruction on a regular basis.

In its March 26, 2008 appellate brief, the petitioner states the following:

Contrary to USCIS's analysis, the College Campus Ministry Training Program does in fact schedule 10 hours per week of instructor/student classroom training in the traditional sense throughout the semester . . . Each trainee weekly attends the four-hour college meeting held on Saturday night, the one-hour coordination meetings held every morning from Monday through Friday, and the one-hour Bible study held once weekly. During the first week and again during the final week of the program, these 10 hours of classroom instruction increase to 20 to 30 hours per week. . . .

During the first hour of the Saturday night meeting, the trainers meet all the trainees and the local staff to review the material for the upcoming meeting. They discuss why the material is pertinent, how it applies to the Christian student, and what specific principles they want to convey. They also discuss the interactions the trainees have had with the students during the day, which students plan to attend the meeting, and how to help the students who are unsure whether to attend. After dinner, the trainees with all the students listen to the lesson from the Bible that the trainer presents. During the last hour, the college students and the trainees are subdivided into smaller discussion groups, each moderated by a member of the local staff. In these small groups they review the principles they have learned from the lesson, share with one another experiences relevant to the lesson, receive practical help on how to apply the principles presented, and answer each other's questions.

The trainees also attend coordination meetings held every morning from Monday through Friday. On Tuesdays and Thursdays these coordination meetings occur in small groups of trainees and local workers, including the trainers, for more customized instruction and to pray for particular matters. During these coordination meetings, the trainers teach, adjust, advise, and coach all the workers, including the trainees, training them all to function as a "coordinated" whole. During these sessions, trainers instruct the trainees and local staff in relevant subjects from the Bible or from the trainees' daily reading material assigned from the syllabus. The trainees are given the opportunity to ask questions about the reading material or regarding the issues that come up during the course of their training. The topics may include: how to preach the gospel, how to lead a Christian to be baptized, how to help a student what to do in their morning time with the Lord, how to shepherd a backsliding believer, how to help a Christian student overcome peer pressure, how to help a student build a relationship with an established family in the church, how to pray, how to prioritize and spend time wisely, and myriad other issues that affect the typical college student. The format of these sessions is intentionally more open-ended, affording the trainees the opportunity benefit from the many trainers in the program who have decades of experience working with college students.

Finally, the trainees also attend a one-hour Bible study during the week moderated by a trainer. In these Bible studies the trainee is part of a small group of students, local workers, and a trainer. Besides learning the topic at hand, by observing the trainer, the trainee also learns how to moderate a discussion, answer questions, and interact with other members of the small group.

However, the AAO notes that this description expands considerably upon the petitioner's original description of these meetings. For example, in its November 16, 2007 letter of support, the petitioner initially described the college meetings as follows:

The college-age members and older members that take care of them, such as the religious workers, meet to sing, hear a message, and fellowship on Saturday night.

The petitioner initially described the coordination meetings as follows:

The employees of [the petitioner] meet to pray, fellowship, and plan their activities together. This meeting is one hour per day, Monday through Friday.

The petitioner initially described the Bible studies as follows:

Small groups of the religious workers meet with the students on the campus of the University of Texas in Austin at various times during the week for one hour.

The AAO agrees with the director's analysis. The "meetings" in which the beneficiaries would spend 10 hours per week cannot credibly be considered akin to "classroom instruction" as discussed in the regulation. It does not appear as though the beneficiaries would spend any time in classroom instruction, as the term "classroom instruction" is commonly understood. The record does not establish that the proposed training program is primarily training in nature. The petitioner has failed to establish that the beneficiaries would be coming to the United States as trainees.

The director also found that the petitioner had failed to demonstrate that the proposed training is unavailable in South Korea, the beneficiaries' 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.

The director stated the following in his denial:

[T]he evidence submitted establishes that the beneficiary's [sic] home country of Korea does in fact have members of your religious belief and organization and can receive the training being provided by the petitioner.

The petitioner states the following on appeal:

[W]e feel the most qualified people to make that determination are the elders of the Church in Jinju, who are financially supporting their members to attend our training program in Austin. . . .

We would like to further add that [the petitioner] has been operating on the campus of the University of Texas in Austin for the last 35 years . . . Many affiliated churches from across the United States and from around the world who visit us seek to learn from us and to emulate our success. We instituted the College Campus Ministry Training Program to accommodate the many requests we have received for training.

The petitioner submitted a letter, dated December 13, 2007, from [REDACTED] Administrator of the Full-Time Training in Seoul (FTTS) program. This letter states, in pertinent part, the following:

FTTS is affiliated with 2,000 churches around the world, including 96 affiliated Churches in Korea. The Church in Jinju, Korea is one of these churches. Except for [the petitioner], none of our affiliated Churches offer this kind of College Campus Ministry Training Program. I am also familiar with the major churches and Christian training programs in Korea that are not affiliated with the Church in Jinju. None of them offers this kind of college campus ministry training program for our FTTS graduates.

The record also contains several other letters attesting to the lack of college campus ministry training in South Korea. The AAO finds the petitioner's assertions and submissions reasonable, and finds them to have overcome the director's concerns in this regard. The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to describe the benefit that will accrue to the petitioner for providing the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(6). The AAO disagrees. The petitioner has described its plans for the beneficiaries after they return to South Korea. While those plans may not satisfy other regulatory criteria at issue in this case, they do satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(6), and the AAO withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to demonstrate that the beneficiaries will not engage in productive employment unless such employment is incidental and necessary to the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(3). The AAO agrees. In his denial, the director stated the following:

The evidence submitted establishes that nearly 100% of the time will be spent either in productive employment or in personal prayer. Very little, if any[,] time will be spent in a training environment where the employee is receiving direct classroom instruction on a regular basis.

On appeal, the petitioner references the "10 hours of classroom instruction per week," which, as discussed previously, the AAO does not consider classroom instruction, and adds the following:

Aside from these 10 hours of classroom instruction per week, the trainee, paired up with a local worker, also spends 5 hours preaching the gospel, 15 hours shepherding new believers, and another 5 hours teaching them. These 25 hours constitute the incidentally productive component of his on-the-job training, which totals 30 hours. We disagree

with USCIS's assessment that the trainees are "placed in the normal operations of the business and will be producing the end product intended by the business." When not in the classroom, the trainee is always paired up with a member of the local staff. The responsibility for production rests primarily on the local worker, not on the trainee. The trainee's responsibility is mainly to observe and to learn. He is encouraged to increasingly contribute as his training and experience progress. If a trainee is sick or otherwise unable to attend to his training, all events continue as scheduled. Furthermore, as previously mentioned, because many foreign trainees struggle with English or have difficulty relating to American young people, their productive contribution to preaching the gospel, shepherding and teaching new believers is often minimal. They observe, they listen, they ask questions, and they participate as they are able – this is how they are trained on the job. While the American trainees are able to contribute more to local production, the benefit of the training to the foreign trainees is not fully realized until they return to their home countries. All of the trainees' participation and productive employment during the training is incidental and necessary to their training. The intent and purpose of the trainees' position is to equip them to be more productively employed when they return to serve in their home church.

We realize that our training program puts more emphasis on on-the-job training than on classroom instruction. Because we are not in the business of producing tangible goods but of gaining souls, our training program is necessarily people-centered. It is vital for the sake of training that the trainees meet and interact with as many kinds of people as possible . . . The trainees learn mostly by doing . . . This is why 30 hours of this training is hands-on and on-the-job, while only 10 hours is in the classroom setting. . . .

The AAO agrees with the director. The record indicates that the duties of the beneficiaries are similar, if not identical, to many of those of the petitioner's employees and parishioners. As noted by the petitioner, its business is not that "of producing tangible goods but of gaining souls." As the petitioner describes its business as that of "gaining souls," performing such work would certainly be considered productive employment, and it appears as though the beneficiaries would be spending most of their time participating in, or directly assisting the petitioner's employees on, such activities. As noted by the petitioner, the beneficiaries will be "encouraged to increasingly contribute as [their] training and experience progress."

Further, the staff members whom the beneficiaries would accompany would still perform their duties, even if the beneficiaries are "sick or otherwise unable to attend to [the] training." This "training," therefore, would continue even if the beneficiaries are not present to be trained; it appears that many, if not all, of the petitioner's employees and members are expected to adhere to the same schedules as those of the beneficiaries'. The record fails to establish that the activities of which the beneficiaries would partake are not also undertaken by other employees of the petitioner. The petitioner has not established that the beneficiaries will not engage in productive employment beyond that incidental and necessary to the training. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(3).

Finally, the director found that the petitioner had failed to establish that the beneficiaries would not be placed in the normal operation of the petitioner's business, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(2). The AAO agrees. In his denial, the director stated the following:

It is also notes that the beneficiaries will be placed in the normal operations of the business and will be producing the end product intended by the business.

The AAO agrees with the director's analysis. Again, this "training" that the beneficiaries are to receive will be conducted regardless of whether the beneficiaries are present to be trained or not; it appears that many, if not all, of the petitioner's employees and members are expected to adhere to the same schedules as those of the beneficiaries'. The record fails to establish that the activities of which the beneficiaries would partake are not also undertaken by other employees of the petitioner. The record indicates that the beneficiaries will be placed into the normal operation of the petitioner's business. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

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 in which 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. The information contained in the record of proceeding remains vague in nature, and leaves the AAO with very little idea of what the beneficiaries would actually be doing on a day-to-day basis; the petitioner has not explained how the beneficiaries will actually be spending their time. For example, it is unclear exactly how the beneficiaries would spend the fifteen hours devoted to nourishing and shepherding new and young believers; the five hours per week devoted to preaching the Gospel and visiting; or the five hours per week teaching and perfecting new and young believers. The petitioner's description of how the beneficiary would spend this time consists largely of generalities. Further, such lack of specificity leads the AAO to conclude that the training program lacks a fixed schedule.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, 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. Nor is it clear that the training program has a fixed schedule or means of evaluation. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). For this additional reason, the petition may not be approved.

Finally, the AAO acknowledges that the petitioner has received H-3 approvals in the past. Regarding the petitioner's previous approvals, the AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the petitioner's previous petitions were approved based upon the same evidence contained in this record, their approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a

service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.