

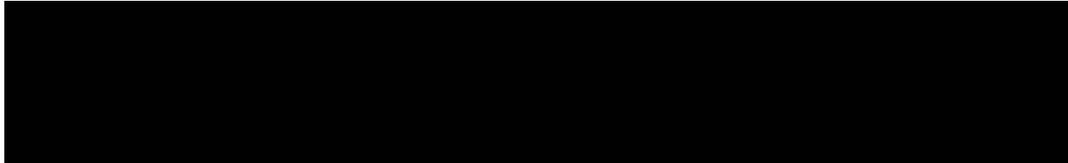
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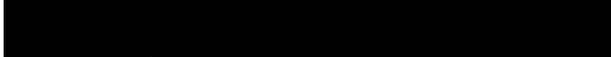
U.S. Citizenship  
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FILE: WAC 08 039 50302 Office: CALIFORNIA SERVICE CENTER Date: **NOV 25 2008**

IN RE: Petitioner:   
Beneficiary: 

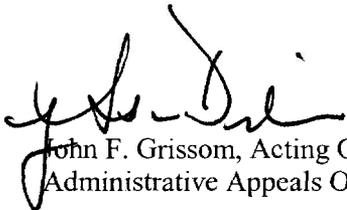
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



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 wholesale importer that seeks to employ the beneficiary as a design and merchandising trainee for a period of eleven 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 two grounds: (1) that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country; and (2) that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program.

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.

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.

In its November 20, 2007 letter of support, the petitioner stated the following:

[The petitioner] is a stylish and innovative company located in Los Angeles, California. [The petitioner] entered the home accessory market in 1986 with a line of highly decorative handmade rugs for every room in the home. . . .

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

The trainee will learn and apply the knowledge and skills gained through this training experience in the areas of operations, merchandising, design, and marketing of our products, when they commence employment abroad. Specifically, the objectives of the training program are:

- To provide the Trainee with the knowledge of [the] company's policies, and operation systems, placing particular emphasis on the operations and distribution of our products in the United States market, with the goal of applying these concepts to other international markets.

To educate [the] Trainee in all aspects of the specialized sourcing and distribution strategies applied in the rug industry.

- To equip the Trainee with the relevant aptitude and practical knowledge in design and merchandising management, and ensure consistent understanding of responsibilities. . . .

The petitioner explained that its proposed training program would last eleven months and consist of seven phases: (1) Orientation and Company Structure; (2) Introduction to Rugs & All About Rugs; (3) Standards and Design; (4) Merchandise Strategies and Import-Export; (5) Marketing; (6) Customer Service; and (7) Management Level Exposure.

The director 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 her January 25, 2008 request for additional evidence, the director requested evidence that the proposed training is unavailable in the beneficiary's home country. In its April 1, 2008 response, the petitioner stated the following:

[The petitioner's] Design and Merchandising training program is proprietary training which covers general principals of design and merchandising as a necessary foundation, however, **the focus of the training is on our company's specific design and merchandising operations, practices, policies[,] and procedures.** . . .

\* \* \*

[T]he focus of the training is on our company's specific design and merchandising operations, practices, policies[,] and procedures; this information is not on the internet or anywhere in the Philippines. It can only be obtained through our training program which is only available at our company's headquarters in Los Angeles, California. As such, **the training is not available in the alien's home country of the Philippines and must take place in the United States** [emphasis in original].

In its June 2, 2008 letter submitted in support of the appeal, the petitioner states the following:

The reason that the training we are offering is not available outside of the U.S. is that it is company specific proprietary training. The nature of proprietary training is that only the proprietor can offer it. Currently, our company is located only in the U.S. Therefore, the training must take place in the U.S.

Counsel states the following in his June 9, 2008 appellate brief:

The record also shows that the petitioner is currently only located in Los Angeles, California, United States of America. Given that the proposed training is proprietary training, and that the proprietor is located in the United States, **the training must take place in the United States** [emphasis in original].

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 reason for creation of the training program is to train the beneficiary on the petitioner's own business practices. Moreover, the petitioner in this particular case has demonstrated 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). The AAO, therefore, withdraws that portion of the director's decision 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 agrees.

The director stated the following in her May 8, 2008 denial:

However[,] no training was described in detail. There were no dates of scheduled classes. There was no detail of course objectives and no detail of the supervision to be provided.

\* \* \*

The petitioner was requested to submit any printed work published by the petitioner which outlines, in detail, the training program provided by the petitioner. In response the petitioner submitted various rug catalogs and post cards advertising sales and shows involving the petitioner. These were not dispositive as to the question of the training program.

Neither counsel nor the petitioner submits additional evidence on appeal. Rather, they refer the AAO to the initial submission and response to the director's request for additional evidence, which the AAO has reviewed. However, the description of how the beneficiary would actually spend her time 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. 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. For example, during the first section of the third phase of the training program, the beneficiary would spend 20 days on "[The Petitioner's] Standards." During the second section of the third phase of the training program, the beneficiary would spend 20 days on "[The Petitioner's] Designs." During the first section of the fourth phase of the training program, the beneficiary would spend 20 days on "[The Petitioner's] US Merchandising Strategies." During the second section of the fourth phase of the training program, the beneficiary would spend 20 days on "[The Petitioner's] International Merchandising Import and Export Transactions." The petitioner, however, does not explain what is going to actually transpire during these sessions. It does not explain how the beneficiary will spend her time during these sessions. While objectives are useful, lists of objectives are not substitutes for descriptions of how those objectives are to be accomplished. The petitioner's description of the rest of its proposed training program suffers similar deficiencies. Nor has the petitioner submitted sample lesson plans or other evidence that would clearly explain what the beneficiary will actually be doing while participating in the training program.

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 petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

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)(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 petitioner has demonstrated that the reason for creation of the training program is to train the beneficiary on the petitioner's own, proprietary, 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 her 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 (again, if the knowledge can be used at employment other than for the petitioner, it is therefore not wholly specific to the petitioner's business, and therefore can be obtained in the Philippines).

However, the petitioner has failed to establish that there is in fact exists a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. According to the petitioner's June 2, 2008 letter, "our company is located only in the U.S." As the petitioner has not demonstrated that it conducts business in the Philippines, there exists no setting in which the beneficiary would be able to utilize her newfound, petitioner-specific knowledge. The career abroad for this training would prepare the beneficiary is, therefore, unclear. 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 setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that, at the time the petition was filed, it actually had operations in, or plans to commence operations in, the Philippines upon completion of the training. The record, as presently constituted, contains no documentary evidence of the petitioner's expansion plans at the time the petition was filed, beyond training the beneficiary. 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). 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 that deals in generalities with no fixed schedule, objectives, or means of evaluation. The AAO incorporates here its previous discussion regarding the vague and generalized nature of the petitioner's description of what the beneficiary would actually be doing while participating in the proposed training program. Again, the evidence of record 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. Providing a list of vague objectives, goals to be accomplished, or skills to be imparted does not substitute for a description of what the beneficiary would actually be doing. While the petitioner is not required to account for every minute, or even every single day, of the beneficiary's time, it must provide information as to how the beneficiary would actually be spending the bulk of her time. 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, while she participates in 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.

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.