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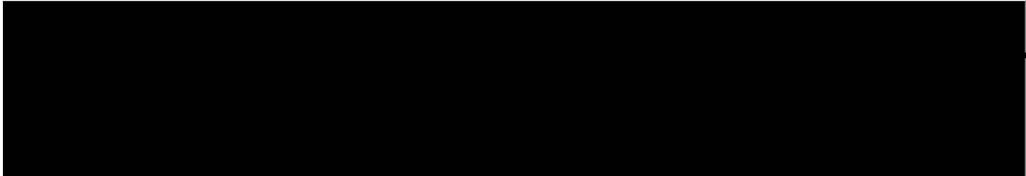
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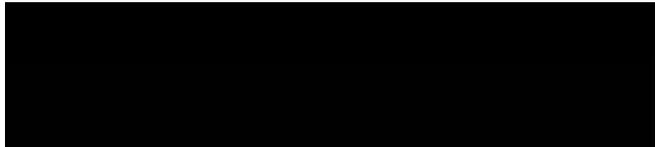
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FILE: WAC 07 249 50091 Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2008

IN RE: Petitioner:

Beneficiary:



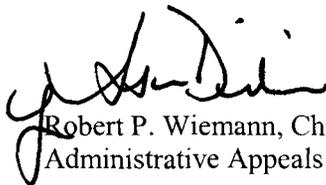
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.


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 importer and exporter of automotive accessories that seeks to employ the beneficiary as a trainee for a period of 20 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 the basis of her determination that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

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 August 10, 2007 letter in support of the petition, the petitioner stated the following:

For over 20 years, [the petitioner] has been in the business of importing and exporting automotive accessories. Few manufacturers can match our aftermarket market expertise. The key to our great success is to design and to engineer products that meet the needs of the consumers in the United States and all over the world.

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

[The petitioner] has representatives all over the world in the continents of North America, South America, Australia, and Europe. Currently, we do not have any representatives in Asia. As a result, we need [the petitioner's] representatives to ensure that our goals and objectives are accomplished overseas. . . .

* * *

Opening branches overseas is becoming a fundamental business practice for contemporary business contexts [and] particularly important for strategic and managerial decision-making. The goal of the training program is to provide trainees with the expertise and practical experience in the wireless technology industry.¹

The petitioner explained that the proposed training program would last 20 months and be composed of four phases: (1) Automotive Technology; (2) The Petitioner's Business Practices; (3) Systems Solutions; and (4) Quality Control in the Petitioner's Workplace.

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 adequately describe the career abroad for which the training will prepare the beneficiary. 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.

In its August 10, 2007 letter of support, the petitioner stated the following:

The training in the U.S. is necessary since we want to ensure that any representatives of our company is [sic] knowledgeable in all aspects of our business and maintains [sic] a high quality of service . . . [The beneficiary] will not only become knowledgeable in the topics that our training program offers, but also through company specific systems as he

¹ Given that the petitioner describes itself in its letter of support as an importer and exporter of automotive accessories, it is unclear to the AAO why the beneficiary would need expertise and practical experience in the field of wireless technology. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

will be engaged in on the job training. Our in-house training is specific to our operations and will remain so wherever we operate.

In its January 25, 2008 response to the director's request for additional evidence, the petitioner stated the following:

[B]ecause our company does not currently have a facility in the Philippines, training in these company-specific operations is not currently available there. . . .

* * *

As part of our plans to establish an office in the Philippines, we are offering a training program to prepare staff for management-level positions abroad . . . This established training program will spend minimal time on general topics, focusing instead on our company's automotive technology, business processes, systems solutions, and quality assurance methods. . . .

* * *

Following our company's training program in management operations, [the beneficiary] will be equipped with sufficient knowledge and skills to assist us with planning and directing business operations as a Manager of our branch office in the Philippines. However, if he does not decide to accept our offer of employment in our overseas branch, he will still gain education in automotive technology and quality assurance for the automotive industry. . . .

The petitioner also included a December 12, 2007 letter to the beneficiary with its response to the director's request for additional evidence. In this letter, the petitioner offered the beneficiary a position abroad at the conclusion of the training program.

In her April 28, 2008 denial, the director stated the following:

Since the record contains no evidence of pending contracts, capital investment, business plans[,] or lease agreements showing that an affiliate or Asia-Pacific expansion may come into existence in the near future, the petitioner has not established that there is currently a career abroad for which the beneficiary will utilize his learned knowledge upon completion of the petitioner's training program. [Nor] does the petitioner indicate how or where the beneficiary will utilize his learned knowledge until the future affiliate becomes a reality.

The director also noted that the December 12, 2007 offer of employment was written after the petition was filed.

On appeal, the petitioner states the following:

As stated in previous letters to the Service, by utilizing our profits and wide network of vendors and clients reaching throughout the world, [the petitioner] intends to establish a branch office in the Philippines as its next business venture. The success of our 5

affiliates in the Philippines . . . and our own research has alerted [the petitioner] to the great potential of the Philippine auto electronics market . . . [W]e are planning to establish a Philippine branch office to cater to this market and streamline our dealings with the Asia region. . . .

Furthermore, we have always asserted that [the beneficiary] will be employed as a Manager at our Philippine branch office after successful completion of our training program. . . .

Following successful completion of our program, [the beneficiary] will return to the Philippines and act as an international company representative and liaison while awaiting completion of our Philippine branch office. He will assist our corporate office with acquiring new client accounts in the Asia region and will provide technical assistance and training to the staff of our Philippine affiliates. . . .

Counsel states the following on appeal:

The Petitioner has consistently provided evidence of the Beneficiary's career abroad and has thus shown that that training will benefit the Beneficiary in pursuing a career outside of the United States. Furthermore, the Beneficiary will be able to utilize the knowledge gained from the Petitioner's training program regardless of whether or not he ultimately accepts the Petitioner's offer of employment abroad [emphasis in original]. . . .

The AAO agrees with the director. The petitioner has failed to establish that there is in fact a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. If the proposed training program would in fact spend "minimal time on general topics" so that it could instead focus on the petitioner's unique methods of conducting business, as asserted by the petitioner, then it is unclear how that training could be utilized by another employer. As the purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner.² As the petitioner has not yet established its "upcoming branch" in the Philippines, there exists no setting in which he would be able to utilize his newfound knowledge. 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 his 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 documentary evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any documentary evidence, beyond its own assertions, to demonstrate that it is in the process of setting up operations in the Philippines. The December 12, 2007 letter from the petitioner offering the beneficiary employment in the Philippines upon completion of the training program is not persuasive in this regard. Going on record without supporting

² The AAO notes the petitioner's assertions that completion of the proposed training program will benefit the beneficiary "in any career outside the United States." However, the AAO also notes that the petitioner's statement that it would spend "minimal time on general topics" so that it could instead focus on the petitioner's unique methods of conducting business conflicts with this statement.

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)).

Nor do the materials submitted on appeal satisfy the petitioner's burden. A position at one of the petitioner's affiliates is not equivalent to a position at the petitioner's own office in the Philippines; the petitioner has not submitted evidence to establish that its affiliates' business practices are so similar to its own that the training the beneficiary would receive in the United States, which focuses on the petitioner's own business practices, would in fact benefit him in a career with one of those affiliates. The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(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 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.

The information contained in the record of proceeding 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. The petitioner is not required to account for every hour, or even every single day, of the beneficiary's time, but the description contained in the record is deficient. For example, during the first phase of the proposed training program the beneficiary will spend four weeks on "Industry History and Recent Developments"; four weeks on a "Digital Automotive Systems Overview"; and four weeks on "Tools, Measurements, and Calculations." Such generalized descriptions fail to explain what the beneficiary would actually be doing during this time.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. For example, the petitioner's description of how the beneficiary is to spend a six-week period of time is limited to the following: "Demonstrator Units/Hands on Training." This does not explain what the beneficiary would actually be doing. In a similar vein, the petitioner's description of how the beneficiary is to spend an six-week period of time is limited to "Vehicles/Hands on Training"; the petitioner's description of how the beneficiary is to spend another three-week period of time is limited to "Amplifier Installation"; and the petitioner's description of how the beneficiary is to spend a four-week period of time is limited to "Speaker Diagnostics and Repair." Again, such limited descriptions, presented in summary form, do little to educate the AAO about what the beneficiary would actually be doing while participating in the petitioner's proposed training program.

Again, 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, on a day-to-day basis, for much of the proposed training program. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of this petition.

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.