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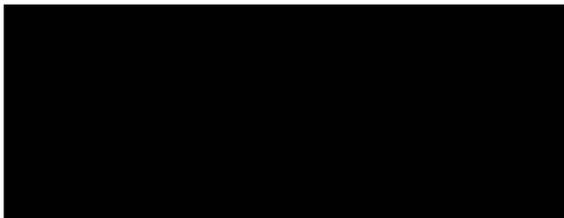
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529 - 2090



**U.S. Citizenship
and Immigration
Services**

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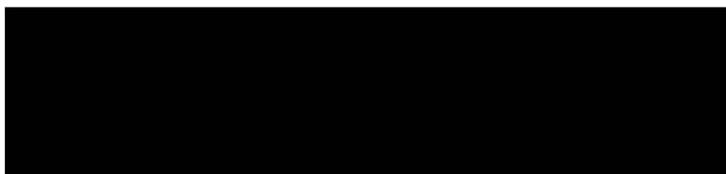
FILE: EAC 08 025 52074 Office: VERMONT SERVICE CENTER Date: OCT 29 2008

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 a structural engineering firm that seeks to employ the beneficiary as “engineer in 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 two grounds: (1) that the petitioner had failed to adequately describe the benefit which will accrue to the petitioner for providing the training; and (2) that the petitioner had failed to demonstrate that its proposed training program was not on behalf of a beneficiary who already possesses substantial training and expertise in the field

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 October 26, 2007 letter of support, the petitioner stated the following:

[The petitioner] is an established firm of structural engineers with extensive experience in all the diversified aspects of engineering. The firm, comprising of 7 employees, was incorporated in 1998. . . .

In its response to the director's request for additional evidence, the petitioner stated the following with regard to why it is offering the training program:

To provide the Trainee with the knowledge of [the] company's policies, and operation systems, placing particular emphasis on the operations and design and production of construction contract documents, with the goal of applying these concepts to other international markets. . . .

To equip the Trainee with the relevant aptitude and practical knowledge in project management, construction administration and [to] ensure consistent understanding of the responsibilities of a Professional Engineer in the structural field of engineering.

The petitioner explained that its proposed training program would last 24 months and consist of four phases.

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 benefit which 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.

In her December 9, 2007 appellate brief, counsel states the following:

The Immigration service erred by maintaining that [the beneficiary's] training in the United States will not accrue any benefit to the petitioning company. The Immigration Service also failed to consider [the petitioner's] genuine business plan. The Company's ultimate goal was to have its very own trained and experienced worker to conduct business directly with their client's [sic] in [the] United Kingdom. The Immigration Service failed to consider the imperative nature of [the beneficiary's] training in the United States in connection with their plan to establish and operate an office overseas. . . .

The AAO agrees with counsel's analysis, and finds the petitioner to have overcome the director's concerns in this regard. The petitioner has described the benefit that will accrue to it as a result of providing the training to the beneficiary. The AAO, therefore, withdraws the portion of the director's decision finding otherwise.

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 field. The AAO agrees. 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.

In its October 26, 2007 letter of support, the petitioner acknowledged that the beneficiary has previous work experience and education in structural engineering. In his December 10, 2007 denial, the director stated the following:

The beneficiary's resume also lists her work experience starting in 2003 till present with 3 engineering firms, and lists her engineering computer skills with AutoCAD 2004, ArchiCAD, Cem SMART, Scale, TEDDS, Lusas and Fastrak, and references letters from part employers talking about the beneficiary's work experience in the engineering field.

Counsel states the following on appeal:

[T]he Immigration Service failed to consider that each structural engineering firm operates uniquely from each other. While she may be considered experienced in [the] structural engineering field, there is much to learn in "actual practice," and this is where their Company will contribute to her well decorated resume. . . .

The AAO agrees with the director. The record indicates that the beneficiary earned a bachelor's degree in civil engineering from Napier University in 2003, and that she is a member of the Institution of Civil Engineers, in the United Kingdom. Her resume indicates that she was employed as a Graduate Engineer by Harley Haddow Consulting Engineers between August 2003 and September 2005; that she was employed by the URS Corporation as a Design Structural Engineer between September 2005 and September 2006; and that she was employed by the Delcan Corporation as a Structural Engineer between September 2006 and the time the petition was filed.

A proposed training program must provide actual training to the beneficiary and not simply increase her proficiency or efficiency. *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965). The question is whether the beneficiary already possesses substantial training and expertise in the proposed field of training, not whether she possesses training and expertise regarding the petitioner's company. The record establishes that the beneficiary has substantial training and expertise in the field of structural engineering. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

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 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 October 26, 2007 letter, the petitioner stated the following:

We intend to expand in the near future . . . Our eyes are currently focused on Europe. . . .

* * *

With [the beneficiary's] assistance, we intend to further develop our international business plans. . . .

In its October 25, 2007 letter, the petitioner stated the following:

It is essential that [the beneficiary] fully understand how we operate prior to establishing our presence in the UK.

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 United Kingdom, the petitioner must document that it actually has plans to commence operations in the United Kingdom 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 United Kingdom. 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 failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4). For this additional reason, the petition may not be approved.

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 the petition. In response to the director's request for **additional evidence, the petitioner provided the names of three individuals who would provide the training: (1) [REDACTED]; (2) [REDACTED]; and (3) [REDACTED]**. The AAO notes that the petitioner has seven employees. Thus, nearly half of the petitioner's workforce will be involved in the supervision of the beneficiary. In a small company, such as the petitioner, the diversion of a single individual, let alone three individuals, for a period of 24 months is significant. There is no indication in the record of how these individuals' normal job duties would be accomplished while they are supervising the beneficiary. Without a description of which duties would be delegated, and the persons to whom the various duties would be delegated, the AAO cannot, in this particular case, find that the petitioner has established that it has the personnel to provide the training specified in the 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.