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U.S. Citizenship  
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FILE: WAC 08 004 54026 Office: CALIFORNIA SERVICE CENTER Date: **SEP 03 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.

*for Michael T. Kelly*  
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 wholesaler, importer, and exporter of health and beauty products, electronics, and appliances. It seeks to employ the beneficiary as a trainee for a period of 18 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 it has the physical plant and sufficiently trained manpower to provide the proposed training; and (2) 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 September 5, 2007 letter in support of the petition, the petitioner stated the following:

[The petitioner] is an importer, exporter, and wholesaler of quality men's and women's health and beauty products and electronics. Founded in the early 90's, the company started as a wholesale distributor of men's shavers. With the success of our men's products, the company ventured into the women's health and beauty market. In 2000, the company jumped on the online bandwagon, using major channels such as eBay, Amazon, and Pricegrabber to sell our products. . . .

Our company continues experiencing rapid growth due to the increase in our customer demands and the wide reach that online marketing has provided us. Utilizing our profits and our connections with national and international affiliates, we have been seeking to expand our operations outside of the United States and make our name known worldwide. Through research and planning, we have found strengthening our business relations with Asia to be cost effective and profitable to our operations.

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

The intent of this training is to develop the skills of the individual for an import/export management position exclusively designed for the offices of [the petitioner] in the United States and its worldwide branches. This program has been developed to expose the trainee to the aspects of the shipping and logistics industry: from operations and company systems to legal considerations and international finance. This program is applicable to future worldwide branches as the company looks into expanding its operations and creating more partnerships with global businesses and encouraging them to expand their ventures worldwide.

The petitioner described the proposed training program as follows:

Our training program spanning eighteen (18) months will provide [the beneficiary] with expertise in import and export transactions, logistics, warehousing, international trade documentation, international transport documentation, business strategies, and procurement for our specific industry.

The petitioner explained that the proposed training program would last 18 months and be composed of eight modules: (1) The Petitioner; (2) Information Management Systems and Logistics; (3) Importing and Exporting; (4) International Trade Documentation; (5) Transport of Goods in International Commerce; (6) International Trade Finance; (7) International Negotiations; and (8) Researching Overseas Markets and Market Entry.

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 establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees.

The petitioner stated the following in its September 5, 2007 letter of support:

The trainee will be under the full supervision of [REDACTED], President/CEO of Distributors, [REDACTED], Vice President of Operations, and [REDACTED] Shipment Manager.

In its February 10, 2008 response to the director's request for additional evidence, the petitioner stated that the beneficiary would be "under the full supervision" of its President/CEO, [REDACTED] and its Vice President of Operations, [REDACTED]. The petitioner stated that [REDACTED] would be able to allocate his work to his subordinates when he is providing the training. The petitioner did not mention the role of [REDACTED] the petitioner's Shipment Manager, in the training, although it did state that the training program had been restructured due to a restructuring of the company.

In her March 20, 2008 denial, the director stated the following:

[T]he petitioner was requested to list the total number of full-time trainers on the petitioner's training staff. . . .

On February 26, 2008 the petitioner responded by stating that the beneficiary will be trained by [REDACTED] Chief Executive (CEO), and [REDACTED] Vice President of Operations (VP). It seems that if the petitioner's CEO and VP will be the only trainers providing full-time training, it would be difficult to maintain the petitioner's business for the duration of the 18-month training program.

On appeal, the petitioner indicates that [REDACTED] its Shipment Manager will once again conduct training. The petitioner states the following:

The trainee will be under the full supervision of the President of [the petitioner], and the Vice President of Operations and Shipment Manager as well. . . .

The petitioner also reiterated its earlier assertion that [REDACTED] is able to allocate work to his subordinates.

The AAO agrees with the director. The petitioner has failed to establish that it has the personnel to provide the training specified in the petition. In arriving at this conclusion, the AAO first notes the evolving nature of the petitioner's description of who will conduct the training. In its September 5, 2007 letter of support, three trainers were to conduct the training: [REDACTED] and [REDACTED]

The petitioner's training schedule, however, did not indicate [REDACTED] role in the training. At the time of its February 10, 2008 response to the director's request for additional evidence, [REDACTED] was no longer a trainer. By the time the appeal was filed on April 21, 2008, [REDACTED] was once again a trainer, and his role in the training is still not clear. In view of the continuing changes in training personnel, the petitioner has not established that it has the personnel to provide the training.

Moreover, the petitioner has failed to address the specific concerns of the director. The director specifically noted that "if the petitioner's CEO and VP will be the only trainers providing full-time training, it would be difficult to maintain the petitioner's business for the duration of the 18-month training program." On appeal, the petitioner offers no additional information to supplement the record that was before the director at the time she made her decision. Rather, it repeats its earlier assertion that the work would be allocated to subordinates.

The petitioner certified on the Form I-129 that it has 13 employees. According to the training schedule submitted at the time the petition was filed, [REDACTED] the petitioner's President and CEO of Distributors, would supervise the beneficiary for the first two months and final seven months of the proposed training program from 8:30 a.m. until 5:30 p.m. In a small company, the diversion of a single individual for a total of nine months is significant, particularly when that individual is the president of the company. Simply stating that he would allocate his work to subordinates is insufficient. Without a description of which duties would be delegated, and the persons to whom the various duties would be delegated (for all trainers), 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. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

The director also 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 September 5, 2007 letter of support, the petitioner stated the following:

Following our training program, [the beneficiary] will . . . occupy the position of Import/Export Specialist at our Philippines branch office, where he will be able to apply his aptitude and abilities to our trade operations in Asia and any career outside the United States should he choose not to become employed with our company.

In its February 10, 2008 response to the director's request for additional evidence, the petitioner stated the following:

Following completion of our import and export specialist training program, [the beneficiary] will be equipped with sufficient knowledge and skills to assist us with planning and directing our international trade operations with Asia as the Import/Export Specialist of our Philippine branch office . . . However, if he does not decide to accept our offer of employment, he will still gain education in import and export transactions, logistics, warehousing, international trade documentation, international transport documentation, business strategies, and procurement. Consequently, he will be able to utilize what he has learned in any relevant position in the Philippines.

However, the petitioner also stated that the proposed training program:

would spend minimal time on general topics, focusing instead on our company's organizational structure, products and industry, business development strategies, information and logistics management, systems of distribution, and documentation standards.

The petitioner also included a September 25, 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.

On appeal, the petitioner states the following:

[T]he Import & Export Specialist training program being offered by [the petitioner] is part of its corporate objectives of expanding its business operations in Asia, particularly the Philippines. . . .

[The] Petitioner asserts that by the end of the training program, the beneficiary will be equipped with sufficient knowledge and skills to assist [the petitioner] with planning and directing its international trade operations with Asia as the Import/Export Specialist of its Philippine branch office . . . While the petitioner has foreseen an eventuality where the beneficiary may not accept this offer of employment, the company is nonetheless certain that the beneficiary will still gain education . . . which would definitely assure him of an auspicious career outside of the United States.

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 program would spend “minimal time on general topics” so that it could instead focus on the petitioner’s unique methods of conducting business, 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.<sup>1</sup> As the petitioner has not yet established its

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<sup>1</sup> 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.” First, the AAO notes 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. Further, in making this assertion, the petitioner is in essence asserting that the skills to be imparted by the proposed training program go beyond those that are specific to the petitioner’s company. If the skills can be utilized in “any career outside the United States,” or even in a related career, then those skills are clearly not specific to the petitioner’s method of conducting business. If the AAO were to accept this argument, which it does not, the AAO would be compelled to enter a finding that the petitioner had failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and (5). 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. If the petitioner is to assert that the skills and knowledge that the beneficiary would learn during the proposed training program are not specific to the petitioner, and could therefore be used at other companies, the AAO questions why the beneficiary cannot obtain such skills in the Philippines. The petitioner has failed to demonstrate the lack of similar training in that country. The petitioner has submitted two newspaper articles regarding unavailability of similar training in the Philippines: the first notes that due to fraud and corruption, import/export companies were sending their employees abroad for training in import/export online shipping and handling, and the second appears to be a classified advertisement (“We know a friend who wants to embark on shipping Philippine-made goodies abroad, but he is in the dark on how to do it. Will anybody please come to the rescue?”). However, the AAO also notes the existence of other import-export companies in the Philippines. For example, according to its website, <http://www.lgatkinson.com>, L.G. Atkinson Import-Export, Inc. is an importer, exporter, and wholesaler located in Quezon City. It is unclear how the individuals working at

“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 September 25, 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 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).

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)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program. The AAO incorporates here its previous discussion regarding the evolving nature of the supervision that the beneficiary would receive. The petitioner has failed to describe, with specificity, the supervision that the beneficiary would receive while participating in the proposed training program. For this additional reason, the petition may not be approved.

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this company obtained their knowledge, if it cannot be acquired in the Philippines. Moreover, the AAO notes that the De La Salle – College of Saint Benilde’s School of Management and Information Technology (SMIT) offers a bachelor’s degree in business administration with a major in export management (BSBA-EM). According to the SMIT’s brochure, this course of study is for those who “wish to start [their] own export business.” According to the SMIT, “[t]raining includes exposure to the dynamic relationship of economics and trade, international market research, international marketing, product management, product design and development[,] and financial management.” See [http://www.dls-csb.edu.ph/content/docs/pdf/smit\\_brochure.pdf](http://www.dls-csb.edu.ph/content/docs/pdf/smit_brochure.pdf) (accessed August 6, 2008). Nor is the petitioner’s assertion in its letter of support regarding higher education in the Philippines persuasive. According to the petitioner, “the top 25 universities in the entire world consist of 18 United States universities. In fact, none of the universities in the Philippines rank amongst the top 100 Asia Pacific universities. Therefore, training that [the beneficiary] will receive with our company in the U.S. will tremendously benefit him for careers outside of the U.S.” The AAO does not find this study useful in its determination of whether the proposed training is unavailable in the Philippines. The record fails to demonstrate that, if the proposed training is not specific to the petitioner, that similar training cannot be obtained in the Philippines, the beneficiary’s home country.

Finally, 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. Again, the AAO notes the changes made by the petitioner to the supervision that the beneficiary would receive: initially, three trainers were to conduct the training: [REDACTED], and [REDACTED]. The petitioner's training schedule, however, did not indicate [REDACTED]'s role in the training. At the time of the response to the director's request for additional evidence, [REDACTED] was no longer a trainer. By the time the appeal was filed, [REDACTED] was once again a trainer, although his role in the training is still not clear.

This is not indicative of a training program with a fixed schedule. 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.