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FILE: WAC 07 167 52764 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:
[Redacted]

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. Heery*
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 authorized agent of Cingular Wireless that seeks to employ the beneficiary as a quality assurance 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 three grounds: (1) that the petitioner had failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) that the petitioner had failed to describe the type of training and supervision to be given; and (3) that the petitioner had failed to demonstrate that the proposed training is unavailable in the Philippines, the beneficiary's home country.

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 April 25, 2007 letter in support of the petition, the petitioner stated the following:

Headquartered in North Hollywood, California, [the petitioner] is an EXCLUSIVE agent for Cingular Wireless. Having 11 convenient locations, we are in a very good position to efficiently and effectively serve our clients. . . .

We deliver mobile infrastructure solutions to wireless carriers . . . These products, aimed at the mobile commerce and mobile business economy, support the complete customer lifecycle, including customer acquisition, risk management, prepay and replenishment, customer relationship management, and retention.

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

[The petitioner] is currently expanding business operations while attempting to cut costs at the same time. . . .

[The petitioner] is planning to establish a branch company in the Philippines, one of the fastest growing counties in Asia economically, and a country that will therefore provide a very good potential market share. . . .

We, therefore, wish to place [the beneficiary] as a Quality Assurance Manager, following the completion of our training program, to plan, direct, and coordinate activities as well as ensure that goals and objectives are accomplished in our [petitioner] Asia branch office.

The petitioner described the proposed training program as follows:

Our Training Program consists of classroom instruction, on the job training, and observation under the direct supervision of a qualified trainer. Trainees will not be involved in any productive employment. Trainees will undergo training in the following modules: wireless technology, business process for Cingular, wireless systems solutions, and quality assurance.

The petitioner explained that the proposed training program would last 18 months. However, although the proposed training program was to consist of four modules and last 18 months, the petitioner only provided timelines for two modules. According to the petitioner, the first phase, "Business Solutions," would last six months, and the second phase, "Wireless Technology," would last seven months.

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 an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO agrees.

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 minute of the beneficiary's time, but the description contained in the record is deficient. Although the petitioner supplements its description on appeal, that description remains inadequate. For example, during the first phase of the proposed training program the beneficiary will spend three weeks on an "Introduction to Wireless Services"; three weeks on "Walk-in Repair: Technical

Support, Diagnosing defective device”; and three weeks on “Warranty Validation: Evaluation, Exchange by Mail.” 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 five-week period of time is limited to the following: “Cellular Introduction: Communication, Analog versus digital, mobile phone steps, band allocation, control of channels service, registration.” 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 eight-week period of time is limited to “Time Division Multiple Access (TDMA): overview, types of modulations theory of operation”; the petitioner’s description of how the beneficiary is to spend another eight-week period of time is limited to “Code Division Multiple Access (CDMA): Theory of Operation, Diversity, audio processing, rake receivers, variable rate speech coders, reverse link power control, advantages”; the petitioner’s description of how the beneficiary is to spend a seven-week period of time is limited to “Problem Solving and Brainstorming: Key Principles, Data”; the petitioner’s description of how the beneficiary is to spend a four-week period of time is limited to “Cause and Effect Analysis”; and the petitioner’s description of how the beneficiary is to spend a six-week period of time is limited to “Quality Control Tools: Histogram, Stratification, Scatter Diagram, and Graphs.” 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.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute 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.

Further, the AAO finds that the training materials submitted by the petitioner are of limited probative value in determining what the beneficiary would actually be doing on a day-to-day basis. First, the AAO turns to the paperwork attached to the document entitled “Learning Plan for [the beneficiary],” submitted at the time the petition was filed, which consisted of such titles as “Selling the Cingular Advantage,” “3G and Cingular Handsets,” “Price Plan Change Policy,” “Bill Adjustment Policy,” and “New Family Talk Plans and Rate Plan Change Policy for Rollover Balance Assessment.” The petitioner has not explained where, and when, these documents fit into the proposed training program. Moreover, the AAO notes that it does not appear as though these titles are designed specifically for the proposed training program. Rather, it appears that they could be used for training any of the petitioner’s employees, regardless of whether they plan to relocate to the Philippines or not.

The “New Hire Training Checklist” and “New Hire Workbook” are of limited probative value for similar reasons. It appears that these materials are used for all of the petitioner’s employees and are not specific to the proposed training program. The record, as it currently stands, fails to establish the existence of any training materials designed specifically for the proposed training program.

Finally, the AAO notes that the petitioner has changed the manner in which the beneficiary would be supervised. In his May 2, 2007 letter of support, counsel stated that he was submitting the resume of [REDACTED], and stated that she would be the beneficiary’s trainer. In its response to the director’s notice of intent to deny the petition, the petitioner stated that it employs more than 65 professionals of various capacities and positions who can be called upon to provide training. On appeal, the petitioner indicates that [REDACTED] would provide 30% of the training in the first phase of the training program, 25% of the training during the second phase, and 70% of the training during the third

phase. The evolving nature of the petitioner's description of who will provide the training is not indicative of a training program with a fixed schedule. Moreover, 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.*

For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner has failed to demonstrate that the proposed training program that not deal in generalities with no fixed schedule, objectives, or means of evaluation, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found that the petitioner had failed to set forth, with specificity, 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 AAO incorporates here its previous discussion regarding the generalized nature of the petitioner's description of its proposed training program, as well as the evolving nature of the petitioner's description of who will provide the training. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

The director found that the petitioner had failed to demonstrate that the proposed training is unavailable in the beneficiary's home country. The AAO agrees. 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 November 13, 2007, the director stated the following:

The petitioner has not demonstrated that similar training is not available in the alien's own country of the Philippines. As noted in the evidence submitted, the telecommunications business is thriving, especially the wireless side. Therefore, in view of the evidence submitted the record is insufficient to establish that the beneficiary cannot receive the training in his own country.

The petitioner's contention that the proposed training cannot be obtained in the Philippines rests on two assertions: (1) that the training is specific to the petitioner's particular way of conducting business, and (2) that training in the development of mobile wireless applications is unavailable in the Philippines. The AAO will address these assertions separately.

The AAO turns first to the petitioner's assertion that the skills and knowledge to be imparted via the proposed training program cannot be obtained in the Philippines because they are specific to the petitioner. In its April 25, 2007 letter of support, the petitioner stated the following:

We have an established in house training program to provide [the beneficiary] with exposure to areas of business management for *our particular industry and operations*.

[The proposed training program] is designed for college graduates who have not yet received adequate training in managing business as they pertain to *our industry* . . . Moreover, the training will provide firsthand knowledge of our systems as well as the operations of our business.

[I]ndustry-specific instruction in conjunction with practical training that is exclusive and unique to [the petitioner] is not presently available in Asia or elsewhere. . .

The petitioner made similar assertions in its August 17, 2007 response to the director's notice of intent to deny the petition. In its January 7, 2008 letter in support of the appeal, the petitioner states the following:

The training program in quality assurance is specific to [the petitioner's] operations in what we teach and how we teach it. As stated above, he will be learning about business processes, wireless technology, and quality control as [the petitioner] offers it.

Thus, the petitioner argues that the training is specific to its own way of conducting business. However, the petitioner also stated the following in its April 25, 2007 letter of support:

Trainees will be able to apply aptitudes and abilities to our upcoming branch in the Philippines and **any career outside the United States should they choose not to become employed with our company** [emphasis added].

In its August 17, 2007 response to the director's notice of intent to deny the petition the petitioner repeated this assertion, and added the following:

As education in the U.S. is widely sought around the world, he will be able to utilize his skills and knowledge in any related career outside of the U.S., should he choose not to be employed in our Philippines branch office.

The latter two assertions are in conflict with the previous assertions. If the training is so specific to the petitioner's method of conducting business that the beneficiary cannot obtain similar training in the Philippines, then an operation run by the petitioner would be the only setting in which those skills could be utilized. If the skills can be utilized in "any career outside the United States," or even in a "related career," then those skills are not specific to the petitioner's method of conducting business.

Further, the AAO notes that, beyond its own assertions, the petitioner has failed to submit evidence to document that its own business practices are different from those practices by similarly-situated companies in the Philippines. 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)).

For all of these reasons, the AAO declines to find that the proposed training is specific to the petitioner's particular way of conducting business.

The AAO turns next to the assertions on appeal by counsel and the petitioner that training in the development of mobile wireless applications is unavailable in the Philippines. In particular, the AAO notes the submission of a report from Pearl2, a Canadian initiative which, according to the petitioner, is designed to support the development of small- and medium-sized enterprises in the Philippines.

However, the AAO does not find the Pearl2 report useful in determining whether the proposed training is available in the Philippines. The purpose of the proposed training program is not to teach the beneficiary to develop mobile wireless applications. Nor is there any evidence that the petitioner itself develops mobile wireless applications, or that anyone on its staff is qualified to do so. For example, the resume of [REDACTED], who was originally going to provide all the training but will now provide only part of the training, indicates that she has a degree in social science and work experience in the fields of human resources, customer service, and personnel recruitment. Her work and educational background do not indicate that she develops mobile wireless applications.

For all of these reasons, the AAO is not persuaded that the unavailability of training in the development of mobile wireless applications in the Philippines is relevant to the determination of whether the proposed training is unavailable in the Philippines.

Finally, the AAO turns to the petitioner's assertion on appeal regarding higher education:

According to the Institute of Higher Education, established by Shanghai Jiao Tong University [footnote omitted], 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 relevancy of this statistic is unclear, as the beneficiary would not be receiving education from an American university. The AAO does not find this study useful in its determination of whether the proposed training is unavailable in the Philippines.

Thus, the AAO has found the following: (1) that the proposed training is not specific to the petitioner's particular way of conducting business; (2) that the unavailability of training in the development of mobile wireless applications in the Philippines is not relevant to this petition; and (3) that, since the beneficiary would not be receiving training at a university, that a study has found 18 of the top 25 universities in the world to be in the United States is not relevant. Moreover, the petitioner has submitted no evidence, other than that found deficient by the AAO, to demonstrate the unavailability of similar training in the Philippines. The petitioner has failed to demonstrate that the proposed training is unavailable in the Philippines. It has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

For the reasons set forth in the preceding discussion, the AAO will not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.