

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

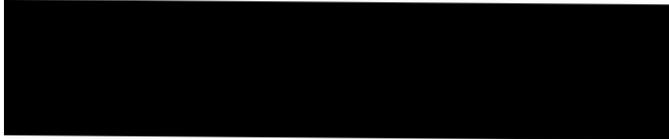
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D4



FILE: WAC 07 229 50939 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 real estate and mortgage company with six employees that seeks to employ the beneficiary as a management trainee for a period of 24 months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on four 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 the structure of the training program; (3) that the petitioner had failed to set forth the proportion of time that will be devoted to productive employment; and (4) that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

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.

With regard to why it is offering the training program, the petitioner stated the following in its July 6, 2007 letter of support:

We have established an in-house training program to provide its [sic] trainees with the expertise in all areas of real estate marketing and management. . . .

Because the substance of the training focuses on [the] real estate market and financial loans/investments strategies in the US, equivalent training is unavailable outside the United States. . . .

The trainee shall establish a global network and serve as a contact person for a possible business expansion for future investors.

In the training program outline submitted at the time the petition was filed, the petitioner explained that its proposed training program would consist of six phases. The first phase would consist of two sessions: (1) the first session, entitled "General Orientation: Structure & Policy," would last one week; and (2) the second session, entitled "Company Management Operations," would last four weeks. The second phase would consist of three sessions: (1) the first session, entitled "Residential Real Estate," would last three months; and (2) the second session, entitled "Commercial Real Estate," would last three months. The third phase would consist of two sessions: (1) the first session, entitled "Advertising and Public Relations," would last two and a half months; and (2) the second session, entitled "Sales and Marketing," would last five and a half months. The fourth phase, entitled "Transaction Coordination and Liaison," would last two and a half months. The fifth phase, entitled "Accounting and Budgeting," would last three and a half months. The sixth phase, entitled "Review, Evaluation, and Assignment," would last one and half months.

Upon review, the AAO agrees with the director's determination 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 the proposed training program 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.

In her March 21, 2008 denial, the director stated the following:

[T]he schedule provided is far too vague to meet the terms of the regulations. The training program is broken down by topic and length of time designated to cover the topic (i.e. Module 1 "Company Orientation"). The topic is then followed by a generic description of the topic to be covered. This structure indicates that the training program deals in generalities. The timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized to meet the terms of the regulations. . . .

There is no detail at all about how the training would actually occur or what the structure of the training would be.

On appeal, counsel and the petitioner elect not to submit additional evidence. Rather, they submit additional copies of the materials that were before the director at the time she made her decision. Counsel states the following in his appellate brief:

The AAO agrees with the director's analysis. The petitioner's description of how the beneficiary would 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. For example, the first session of the second phase of the proposed training program would last three months. The petitioner's description of how the beneficiary would spend this period of time consists of three sentences. Its descriptions of how the beneficiary would spend the remaining period of her time suffer similar deficiencies. While the petitioner is not required to account for every minute of the beneficiary's time, it must provide detailed information as to how the beneficiary would actually be spending the bulk of her time: summary descriptions of how the beneficiary would spend months of time are insufficient. Nor is the training manual sufficient: the record does not support a finding that the petitioner would be able to spread this relatively short booklet across 24 months of training.

For all of these reasons, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the record fails to demonstrate the existence of a training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

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. The AAO agrees. 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 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 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 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 of what the beneficiary would actually be doing, on a day-to-day basis, while she participates in the proposed training program.

The petitioner has failed to provide a meaningful description of what the beneficiary would actually be doing, on a day-to-day basis, while she participates in the proposed training program. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

The director also found that the petitioner had failed to set forth the proportion of time to be devoted to productive employment, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(2). The AAO agrees. As the petitioner has failed to make such a demonstration, the director was correct to deny the petition on this ground.

The director also found that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, as required by

8 C.F.R. § 214.2(h)(7)(ii)(B)(3). The AAO agrees. Again, as the petitioner has failed to make such a demonstration, the director was correct to deny the petition on this ground.

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 three 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. In its letter of support, the petitioner stated that the proposed training program focused on the real estate market of the United States, loans in the United States, and investment strategies in the United States. The petitioner has failed to explain how this knowledge will be beneficial to the beneficiary in pursuing a career outside the United States. 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)(D) precludes approval of a petition in which the proposed training is in a field in which it is unlikely that the knowledge or skill will be used outside the United States. Training on the United States real estate market is not likely to be utilized outside the United States. 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 fails to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. In its July 6, 2007 letter of support, the petitioner stated the following with regard to the supervision that the beneficiary would receive:

At all times during the training program, the trainee is under the direct and immediate supervision of the officer coordinating that aspect of the training program.

The petitioner certified on the Form I-129 that it has six employees. It is unclear how the petitioner will be able to function while at least one-sixth of its entire workforce is providing classroom instruction and practical training to the beneficiary. Nor has the petitioner explained how the trainers' normal duties would be performed while they are providing training to the beneficiary. Without this information, 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 regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) 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.