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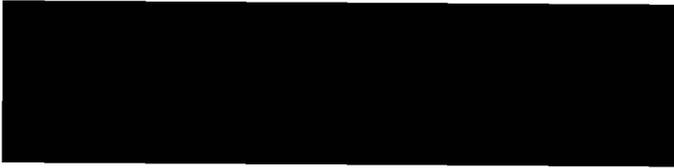


FILE: WAC 08 007 51131 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 2008**

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 development and investment company with one employee that 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 25, 2007 letter in support of the petition, the petitioner stated the following:

This comprehensive program will help participants develop a range of high level skills in facilities, planning and project management skills. It is our goal to develop highly qualified individual/s to fill in key positions at [the petitioner], its branches and affiliates abroad. This training was specifically designed to provide [the] trainee with extensive direct exposure to Commercial properties and Facilities management.

* * *

This training is designed to give participants comprehensive, in-depth, practical training. This exclusive and rare training opportunity allows participants to gain practical experience in [the] real estate and property management industry. Ultimately, the knowledge gained will be valuable as the trainee joins the branches and affiliate abroad. Moreover, the business relationships he and/or she have built during the training will be extremely useful as the U.S. office and the branches abroad will be closely working together for future projects.

The petitioner explained that the proposed training program would last 18 months and be composed of three modules: (1) Introduction; (2) Facility Management Responsibilities; and (3) Project Planning and Management. The first module would consist of four courses: (1) Industry Profile; (2) Facility Management; (3) Property Management; and (4) Commercial Property. The second module would also consist of four courses: (1) Facility Planning; (2) Facility Financial Forecasting; (3) New Construction and/or Renovations; and (4) Maintenance and Operations Management. The third module would also consist of four courses: (1) Business Context of a Project; (2) Project Planning and Management; (3) Design Process; and (4) Construction and Occupancy.

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.

At the outset of its analysis, the AAO notes that on September 5, 2007 the petitioner certified, on the Form I-129, that it has a gross annual income of \$9 million. However, the petitioner informed the Internal Revenue Service on its 2005 and 2006 tax returns that it had no gross receipts or sales in either of those years. The petitioner reported a loss of \$380 in 2005, and a loss of \$523 in 2006. 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.*

Having noted this inconsistency in the record of proceeding, the AAO turns to the issues raised by the director.

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 25, 2007 letter of support:

Due to the significance of the Facility Maintenance and Property Engineers/Managers, the Operations Manager is in-charge of full supervision. Although, each Course and/or program will be facilitated by an individual expert in that field participants are required to report directly to the Operations Manager at the end of each course.

In his February 20, 2008 response to the director's request for additional evidence, counsel stated the following:

[The training program] will be primarily conducted by its President, since he is over-all in charge of the company's affairs and very much knowledgeable in the field of facilities management. The President shall be working with his **Operations Manager in this training program** and along with his other **Division heads** [emphasis in original].

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

Although the petitioner may have the physical premises in which to provide the training, the petitioner has not established that it has enough sufficiently trained manpower to provide the training specified. The record shows that the petitioner's staff consists of one person who is the president of the company. The petitioner states in his response to USCIS's request for additional evidence, that the president will be providing the beneficiary's training with his operations manager and along with other division heads. However, the petitioner has not explained how he will still be able to perform his duties. In addition, the petitioner did not provide any evidence to substantiate his claim that there is an operations manager and other division heads to provide the training.

On appeal, the petitioner offers the following rebuttal:

We have employees to whom the President may designate some of his duties. Furthermore, the fact that the Vice President together with other Division Heads will intermittently conduct the training is sufficient to establish that they can perform their duties and conduct the training without any interference in their daily duties.

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. As noted previously, the petitioner first stated that the operations manager would primarily conduct the training. Later, the president was to oversee the training.

Further, the petitioner certified on the Form I-129 that it has one employee. It is unclear how this employee would be able to provide the training specified in this petition for a period of 18 months and still attend to his normal duties. Although the petitioner references other employees on appeal, the existence of such employees is not supported by the record.

Moreover, the petitioner has failed to address the specific concerns of the director. The director specifically noted that "the petitioner has not explained how he will still be able to perform his duties. In addition, the petitioner did not provide any evidence to substantiate his claim that there is an operations manager and other division heads to provide the training." 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.

Finally, the AAO notes that on appeal the petitioner claims that it now has “a full time instructor designated to complete the training.” The petitioner provides neither the name nor the qualifications of the full-time instructor. Further, the AAO does not find credible the assertion that the petitioner now has two employees: (1) the president; and (2) a full-time trainer who will train the beneficiary in the proposed training program. Without further evidence to support this assertion, such as a business plan or model that specifically addresses the prudence of a one-employee company hiring a second employee who will spend all of his or her time conducting classroom and on-the-job training, as well as payroll information to confirm that this individual is in fact employed by the petitioner, the AAO will not accept the assertion. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

For all of these reasons, 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 25, 2007 letter of support, the petitioner stated the following:

It is our goal to develop highly qualified individual/s to fill in key positions at [the petitioner], its branches and affiliates abroad. This training was specifically designed to provide [the] trainee with extensive direct exposure to Commercial properties and Facilities management.

* * *

Attendees of this 18-month training will be educated on all aspects of [the petitioner], that may include but is not limited to planning, developing, coordinating, analyzing[,] and maintaining business systems, functions[,] and activities of the company. . . .

* * *

Ultimately, the knowledge gained will be valuable as the trainee joins the branches and affiliate abroad.

In its February 20, 2008 response to the director’s request for additional evidence, the petitioner stated the following:

[The beneficiary will] learn specifics of the company's business, which includes the history of the company, its organizational structure, its business plans, its operations, facilities management, project management and commercial property procedures, as well as its policies. These matters are **peculiar** to the business of the petitioner and **are not replicated** elsewhere [emphasis in original].

* * *

[T]he training program shall specifically deal with the complex issues and program technicalities which are all intrinsically connected with the nature of Petitioner's business. . .

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

On December 4, 2007 USCIS issued a request for additional evidence . . . In its response, the petitioner stated that its aim is to transfer technology and strengthen industrial relations among the petitioner and its business affiliates abroad. The petitioner further stated that the beneficiary has received an offer from A.D. Goseco Corporation of Manila, Philippines, a large architectural company affiliated with the petitioner. The petitioner has made a statement that A.D. Goseco Corporation was affiliated with the petitioner, but provided no evidence to support it.

On appeal, the petitioner repeats its earlier assertions, and submits no evidence to document its affiliation with the A.D. Goseco Corporation. It has failed to overcome the director's concerns in this regard. 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 is specific to 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. As the petitioner has failed to establish that it has any business operations 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. 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 three 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. As a preliminary matter, the AAO incorporates here its previous discussion regarding the deficiencies contained in the petitioner's description of the supervision the beneficiary would receive while participating in the proposed training program. Further, the petitioner's description of its proposed training program remains generalized and vague in nature, and leaves the AAO with little idea of what the beneficiary would actually be doing on a day-to-day basis. While the petitioner does submit a 142-page training manual, it consists largely of reading materials, and it is unclear how the petitioner would be able to stretch such reading material across 18 months of training. Nor is this reading material linked to the training schedule in any meaningful way. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, but the description provided is inadequate. For this additional reason, the petition may not be approved.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires the petitioner to indicate the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. As noted previously, although the petitioner certified on the Form I-129, that it has a gross annual income of \$9 million, the petitioner informed the Internal Revenue Service on its 2005 and 2006 tax returns that it had no gross receipts or sales in either of those years. The petitioner reported a loss of \$380 in 2005, and a loss of \$523 in 2006. The petitioner has not indicated the source of the remuneration that the beneficiary would receive. For this additional reason, the petition may not be approved.

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. The AAO incorporates here its previous discussions of the deficiencies in the petitioner's descriptions of the supervision that the beneficiary would receive, as well as the generalities contained in its description of what the beneficiary would actually be doing while participating in the training program. The petitioner has failed to establish that its proposed training program does not deal in generalities. 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.