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FILE: WAC 08 010 50645 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 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 192-unit apartment complex 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, newly-retained 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 September 18, 2007 letter in support of the petition, the petitioner stated the following:

[The petitioner] is a one hundred-ninety-two unit apartment complex in Lakewood, California. Since 1994, we have provided superior property management services, and our record speaks for itself. . .

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

[T]he Philippines' real estate industry has strong potential for development. We are confident to prosper in a profitable niche market in the Philippines, while also broadening our list of properties and services for our customers in the U.S. Therefore, [the beneficiary's] background and strong ties in the Philippines will prove to be an asset in our oversea[s] expansion strategy.

The petitioner explained that the proposed training program would last 18 months and consist of five topics. The first topic, entitled "Introduction to Property Management," would last one month. The second topic, entitled "Property Management: A Close Look," would last four months. The third topic, entitled "Intermediate Issues in Property Management," would last three months. The fourth topic, entitled "Finance in Property Management," would last four months. The fifth topic, entitled "Management: Starting an Oversea[s] Office," would last six 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 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.

In its September 18, 2007 letter of support, the petitioner stated that two individuals would provide instruction: (1) [REDACTED] the petitioner's Accountant/Property Manager; and (2) [REDACTED] the petitioner's Assistant Property Manager. In its February 19, 2008 response to the director's request for additional evidence, the petitioner amended the training program to add [REDACTED], as an additional trainer.

In her March 31, 2008 denial, the director stated the following:

Although the petitioner has 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 12 persons, which include the director of operations, property manager/accountant, assistant property manager, maintenance supervisor, courtesy patrol, leasing specialist, and maintenance technician. The petitioner states in his response to USCIS's request for additional evidence, that the property manager/accountant and two assistant property managers will be providing the beneficiary's training. However, the petitioner has not explained how they will still be able to perform their [regular] duties.

In his May 28, 2008 appellate brief, newly-retained counsel states the following:

[The] Petitioner has allocated three part-time trainers to supervise the training program. All selected trainers are qualified to perform the proposed training topics because they have sufficient knowledge and practical training necessary to accomplish the training goals. . . .

During the training hours, trainers would allocate their work to subordinates and their regular work at the company would not suffer because of the training program. The training program consists of 30 hours only and will be shared by different trainers. . .

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 changed the nature of the supervision to be provided during the pendency of the petition.

Moreover, counsel has failed to address the specific concerns of the director. The director specifically noted that "the petitioner has not explained how [the trainers] will still be able to perform their [regular] duties." On appeal, counsel offers no additional information to supplement the record that was before the director at the time she made her decision. Rather, he repeats earlier assertions that the work would be allocated to subordinates.

The petitioner states that it is a 192-unit apartment complex with 12 employees. In a relatively small company, the loss of an individual for a total of 18 months is significant, particularly when that individual is an accountant/property manager or assistant property manager. 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 disagrees. 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 18, 2007 letter of support, the petitioner stated the following:

[The beneficiary] will be able to apply his aptitude and abilities to our property management operations in Asia and any career outside the United States should he choose not to become employed by our company.

In its February 19, 2008 response to the director's request for additional evidence, the petitioner stated the following:

[I]f he does not decide to accept our offer of employment, he will still gain education in property law, real estate finance, landlord-tenant relations, property management software, and market entry strategies for our industry. Consequently, he will be able to utilize what he has learned in any relevant position in the Philippines.

Counsel stated the following on the Form I-290B, received at the service center on May 2, 2008:

[I]f there is any delay in setting up the overseas office, [the petitioner] can rely on the knowledge gained by the training to find a better job and make herself [sic] more marketable for a career in her [sic] home country.

In his May 28, 2008 appellate brief, counsel reiterated that the beneficiary would be able to utilize his newfound training even if he does not work for the petitioner.

The AAO finds that the petitioner has overcome the concerns of the director in this regard. The petitioner has established that the knowledge to be imparted via the training program is not specific to the petitioner, and can therefore be utilized in an employment setting other than for the petitioner. The petitioner has submitted evidence establishing that the beneficiary will have ample job opportunities upon his return to the Philippines. The petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4). The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

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 an additional reason.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration that the proposed training is not available in the alien's own country, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner to submit a statement which indicates the reasons why the training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States.

The AAO notes the assertions of counsel and the petitioner, made since the petition was filed, that completion of the training program will aid the beneficiary in "any career outside the United States," and "in any relevant position in the Philippines." Moreover, the record contains an offer of employment to the beneficiary from a real estate developer in the Philippines. In making these assertions, 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 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 those skills in the Philippines. For example, it is unclear where Steve Tajanlangit, the real estate developer who has offered the beneficiary a position in the Philippines should he not accept the job offer from the petitioner, received his training. It is also unclear how the employees of property management companies in the Philippines were able to obtain their training if such training is unavailable in that country, or how instructors of property management courses in the Philippines were able to obtain their training.<sup>1</sup>

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<sup>1</sup> The De La Salle Professional Schools, located in the Philippines, offer a post-graduate diploma in **property management**. See <http://www.dlsp.s.edu/ph/index.php?cat=67&id=34> (accessed August 21, 2008). The AAO also notes the existence of many property management companies in the Philippines, and presumes that at least some of their property managers received training in the Philippines; see, e.g.,

The record fails to demonstrate that, since the proposed training is not specific to the petitioner, that similar training cannot be obtained in the Philippines, the beneficiary's home country. The petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). 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.

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<http://www.ayalaproperty.com/ph> (accessed August 21, 2008) (Ayala Property Management Corporation which, according to its website, has a 20-person management team); <http://www.colliers.Com/Markets/Philippines/about/AboutUs> (accessed August 21, 2008) (Colliers International which, according to its website, has a staff of 50, as well as 150 on-site property management staff); [http://www.cpmi.com.ph/index\\_frame.htm](http://www.cpmi.com.ph/index_frame.htm) (accessed August 21, 2008) (Centuries Property Management which, according to its website, manages 47 buildings and is the largest property management company in the Philippines); and <http://www.fpdglobal.com> (accessed August 21, 2008) (FPD Integrated Services, Inc.).