

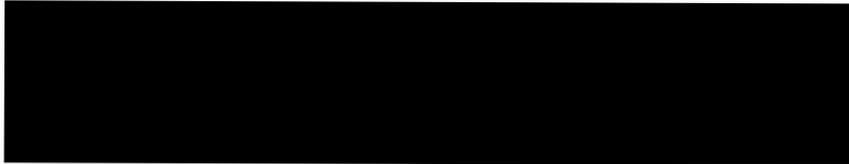
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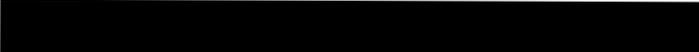
U.S. Citizenship  
and Immigration  
Services

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DG

FILE: WAC 08 011 52247 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 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 pharmaceutical, petroleum, and chemical trading company that seeks to employ the beneficiary as a trainee for a period of 21 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 18, 2007 letter in support of the petition, the petitioner stated the following:

[The petitioner] is specialized in the fields of Petroleum Products & Chemicals. [The petitioner] has its trading activities spread world-wide with manufacturing support bases in China, India, Korea and Singapore. [The petitioner] has its own tanks and warehouses in Shenzhen, Singapore, Mumbai, Hamburg, Los Angeles, Chicago and New Jersey enabling prompt shipments. [The petitioner] services customers in South-East Asia, China, Japan, [the] Indian Sub-continent, [the] Middle East, Western Europe, Canada, [the] U.S.A., Mexico, Brazil, Argentina and Chile.

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

In the next few years we have an aggressive plan of international expansion . . . In light of the booming Asian market and the recent popularity in Asian products, we have to establish [a] business satellite in Asia in order to compete with other players in the industry. . . .

The petitioner explained that the proposed training program would last 21 months and be composed of five modules: (1) General Orientation: Overview of the Company; (2) Quality Assurance & Purchase Management; (3) Operations & Financial Management; (4) Sales & Customer Service; and (5) Performance Evaluation.

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 disagrees.

In her April 4, 2008 denial, the director noted that the petitioner had not explained how the trainers would be able to attend to their regularly-scheduled duties while also training the beneficiary. On appeal, the petitioner submits additional evidence regarding the trainers' duties, as well as information regarding the individuals who would perform their regular duties when they were themselves unable to do so. The AAO finds the petitioner's submission reasonable, and finds that it has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

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 18, 2007 letter of support, the petitioner stated the following:

[The training] is not available anywhere else because it is entirely unique to the operations of [the petitioner]. . . .

However, it also stated the following:

[T]he knowledge gained from the training program will be applicable to other industries should [the beneficiary] not take up a position in our oversea branch.

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

Our Quality Assurance Controller training program is intended to prepare [the beneficiary] for employment in the Philippines at our forthcoming branch. . . .

To summarize; the training will be beneficial to [the beneficiary] in pursuing a career in Quality Assurance in the Philippines with our company. . . .

The petitioner also included a September 17, 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:

**The record shows that [the petitioner] has provided a very thorough description of the career abroad for which the training will prepare the alien; we have explained that the training will prepare the alien for the position of Quality Assurance Controller and that this career will be in the Philippines . . . As such, we have adequately described the career abroad for which the training will prepare [the beneficiary] [emphasis in original].**

The AAO agrees with the director. The petitioner has not adequately described the career abroad for which the training will prepare the beneficiary. It has failed to establish that the career abroad it has described for the beneficiary in fact exists. It 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 training program would be "entirely unique" to the petitioner's operations, 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. However, the petitioner has not established that it currently has any operations in the Philippines: in its February 19, 2008 response to the director's request for additional evidence, the petitioner still referred to the branch in which the beneficiary would work as one that is "forthcoming."

As the petitioner has not yet established its "forthcoming branch" in the Philippines, there exists no setting in which the beneficiary would be able to utilize her 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 17, 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) or 214.2(h)(7)(ii)(B)(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 an additional reason.

The regulation at 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 information contained in the record of proceeding 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 module of the proposed training program would last two months. While the petitioner provides a list of objectives to be learned, it is unclear what the beneficiary would actually be doing while in the classroom or while receiving on-the-job training. The reading material from the training manual is not related to the beneficiary's activities in any meaningful way; for example, it is unclear whether the five pages of material devoted to this period of time will be discussed in the classroom or whether the beneficiary will have been expected to read it prior to class. **The second module would last five months. Again, the evidence provided leaves little indication as to what the beneficiary will actually be doing during this time. The training manual devotes five pages to this five-month period of time. As no sample lesson plans (or similar information) have been provided, it is unclear how this material will be stretched across five months of classroom study. It is unclear what will actually transpire during the period of time allotted to classroom instruction.**

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. Objectives are provided, but lists of objectives are not substitutes for descriptions of how those objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing during this time, and it is unclear how the reading material contained in the training manual will be stretched to cover 21 months of training. Again, the petitioner has failed to submit sample lesson plans or other evidence that would clearly explain what the beneficiary will actually be doing while participating in the training program.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every day, of the training program. However, it must explain how the beneficiary will actually be spending her time while participating in the training program; submitting copies of reading materials or generalized objectives is insufficient. Here, 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. 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.