

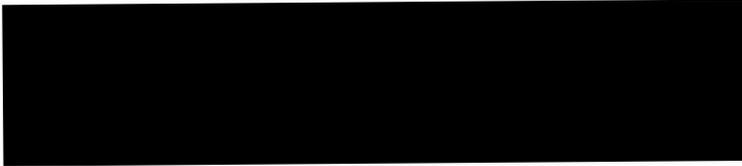
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U.S. Citizenship
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Services

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FILE: WAC 07 220 50698 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 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. Healy
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 manufacturer of steel doors, frame systems, and hardware. It seeks to employ the beneficiary as a “sales manager and logistic analyst trainee” for a period of 23 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 request for additional evidence; (3) the petitioner’s response to the director’s request; (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 four grounds: (1) 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; (2) that the petitioner had failed to adequately 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 to 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.

In its June 11, 2007 letter of support, the petitioner stated the following:

[The petitioner] was incorporated in California in 2002. From the beginning, our management and staff have been dedicated to the needs of our customers. [The petitioner] constantly strives to meet the demands of the steel door and frame industry by providing premium products to the customer. Superior quality, a strong service commitment, and value are [the petitioner's] watch words. Standard features built into each door and frame reflects [sic] constant attention to detail and performance. [The petitioner] is committed to providing superior quality and service, at competitive pricing to our customers.

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

[The petitioner's] projects in extending and diversifying the business are all getting connected to the global market and specifically to the rapidly growing Asian market. As a manufacturer/wholesaler, [the petitioner] has been becoming increasingly dependent on its Asian partners. The company's presence in Asia will be the next logical step in [the] structural development of the company. Therefore, the goal of the training program is to prepare highly competitive professionals for the company's potential expansion in Asia. . . .

[T]he training program will provide the trainee with a range of skills in the fields of operations, sales, financial management, customer service, human resource[s] and management techniques utilized by the company. This program is designed to prepare the trainee with eventual overseas assignment.

The petitioner described the proposed training program as follows:

The proposed training will last 23 months. The trainee will undergo academic instruction and practical training six hours per day, five days per week . . . The trainee will receive approximately 75% academic training in classroom instructions and discussions, and 25% of the training in written and oral presentations, and in on-the-job training.

The petitioner explained that its proposed training program would be broken into ten sections: (1) Introduction to the Company; (2) Sales Marketing Training; (3) E-Commerce Management Training; (4) Financial Management Training; (5) Customer Service Training; (6) Marketing Management Training; (7) Win-Win Negotiations Training; (8) Technical Presentations Training; (9) Strategic Plans Training; and (10) Logistics Analyst Training.

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. The AAO agrees. 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 director stated the following in her February 21, 2008 denial:

While USCIS concurs with counsel that the petitioner did provide objectives and goals for the beneficiary, the schedule provided is far too vague to meet the terms of the regulations . . . The 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. . .

The AAO agrees with the director. 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 section of the proposed training program would last two months. While the petitioner provides a list of objectives to be learned and a list of the petitioner's products, it is unclear 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. 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.

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, and counsel elects not to provide additional information regarding what the beneficiary will actually be doing on appeal. It has failed to satisfy 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 of the vague and generalized nature of the petitioner's description of the proposed training program. Again, while the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, it 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 petitioner 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; and 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)(2) and (3). The AAO disagrees. The petitioner provided this information in its June 11, 2007 letter of support and supporting documentation. Accordingly, the AAO finds that the petitioner has overcome the concerns of the director in this regard, and it 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 two additional reasons.

The regulation at 8 C.F.R. § 214.2(h)(7)(i)(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 turns first to the May 19, 2007 letter from _____ proprietor of MRC Manufacturing Enterprises, located in the Philippines, which states the following:

This training for [the] manufacturing and selling of steel doors and frames for industrial and commercial uses is not available as a training course in the Philippines.

However, no evidence to support this opinion is submitted. 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)). Nor has any evidence been submitted to establish _____'s expertise to opine on this matter. *Id.* An inadequate factual foundation to support _____'s opinion has been established. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Also, the AAO finds counsel's assertion that the beneficiary's training "will first be focused on the US market, its business environment and the fast-changing moving and storage industry" deficient. Counsel has submitted no evidence to establish that the United States moving and storage industry is different from that of the Philippines. Again, simply 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, counsel states that computer and IT knowledge is "a luxury" in the Philippines and that, for most Filipinos, "computer and Internet surfing are unthinkable frivolities,"¹ and submits evidence regarding its educational system.² The issue to be addressed is not whether the Filipino economy is less advanced than that of the United States. The issue is whether similar training is available in the Philippines. The Philippines possesses many well-established, and well-respected, colleges and universities. Many of these schools offer computer training, upon which the lack thereof counsel rests his argument. The AAO also takes note here that many United States firms have outsourced information technology functions to the Philippines.³ This does not necessarily demonstrate that training programs similar to that proposed

¹ As of April 2007, the Philippines had 14,000,000 internet users. See <http://www.internetworldstats.com/asia.htm> (accessed September 2, 2008).

² A simple google search reveals that many colleges and universities offer undergraduate and graduate training in computer science. See, e.g. http://www.engg.upd.edu.ph/cs/undergraduate_program.html (accessed September 2, 2008); see also http://www.engg.upd.edu.ph/cs/graduate_program.html (accessed September 2, 2008); see also <http://www.ics.uplb.edu.ph> (accessed September 2, 2008).

³ See, e.g., http://www.businessweek.com/print/globalbiz/content/sep2006/gb20060919_639997.htm (accessed September 2, 2008): "[The] Philippines gets high marks for its large educated talent pool and English language skills . . . [t]he recent growth spurt in the outsourcing industry in the Philippines has been fueled not by traditional low-valued-added call centers but by more higher-end outsourcing such as

here exist in the Philippines, but it does undermine the evidence submitted by the petitioner. The petitioner has not established that similar training is unavailable in the Philippines. It has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) or 8 C.F.R. § 214.2(h)(7)(ii)(B)(5). For this additional reason, the petition may not be approved.

Finally, the AAO notes that, in his November 13, 2007 response to the director's request for additional evidence, counsel stated the following:

Computer use in the medical field is also necessary as experience and solutions in handling unknown diseases and sickness can easily be accessible to the medical providers worldwide. . . .

[T]he technical education and accessibility to computers and other information needed in the healthcare field are very limited in the Philippines. . .

However, given the goals and objectives of the petitioner as set forth in the record of proceeding, it is unclear to the AAO why the beneficiary would need to handle "unknown diseases and sicknesses," or why he would need training in "the healthcare field." 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.* at 591. 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.

legal services, Web design, medical transcription, software development, animation, and shared services. . . ." *See also* <http://www.computerworld.com/action/article.do?command=viewArticleTOC&specialReport+ID=360&articleID=84815> (accessed September 2, 2008): "[T]he Philippines' popularity [for IT outsourcing is due to] its English proficiency, a highly skilled workforce (380,000 college graduates annually) . . . [T]here are about 10,000 software programmers nationwide."