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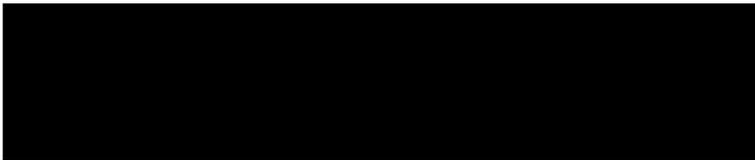
FILE: WAC 07 157 50812 Office: CALIFORNIA SERVICE CENTER Date: DEC 31 2007

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.

Michael T. Kelly
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 manufacturing agents for electrical products that seeks to employ the beneficiary as a trainee for a period of twenty-four 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 two grounds: (1) that the petitioner had failed to establish that the proposed training would not place the beneficiary in a position that is in the normal operation of the petitioner's business and in which citizens and resident workers are regularly employed; and (2) that the petitioner had failed to demonstrate that the proposed training program is not inconsistent with the nature of the petitioner's business.

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 May 2, 2007 letter of support, the petitioner stated the following:

In order to establish and increase our global presence and market share, our senior management has made the decision to establish a subsidiary/cooperating business in other key areas of the world. Due to the fact that the European Union has become a promising market, we plan on establishing an office in the United Kingdom. . . .

As evidenced by the attached Training Schedule, we have constructed a 24-month training session, which includes all aspects of our business. Throughout different sessions, [the beneficiary] will be required to present his competence and understanding of presented information and procedures in an oral, written[,] and "hands-on" manner.

* * *

[W]e would like for [the beneficiary] to develop a thorough understanding of the products we sell as well as the manufacturing process due to the fact that this knowledge is a crucial aspect of business development and increase our market share.

According to the training schedule submitted by the petitioner, the proposed training program would consist of five components. The first component, entitled "Process Training," would last six weeks. The second component, entitled "Product Training," would last ten weeks. The third component, entitled "Professional Training," would last four weeks. The fourth component, entitled "Field Training," would last twenty-four weeks. The fifth component, entitled "Recruitment of New Manufacturers," would last thirteen months.

The director found that the petitioner had failed to establish that the proposed training would not place the beneficiary in a position that is in the normal operation of the petitioner's business and in which citizens and resident workers are regularly employed. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires a demonstration that 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.

In her June 28, 2007 denial, the director stated the following:

It does appear that the petitioner will be placing the beneficiary in facilities to provide services that would be in the normal operation of business, since the petitioner's primary business is electrical products. Since the training plan is for the beneficiaries to receive on-the-job training in a facility specializing in a field other than that in which they are being trained, it is determined that the petitioner is simply placing them in a position in the regular course of business.

On appeal, counsel states the following:

In order to familiarize [the beneficiary] with the manufacturers that [the petitioner] represents, [the beneficiary] will spend time with these manufacturers to familiarize him with their products. Surely, this is not outside the realm of his training as knowledge of

the manufacturers and their products would prove to be a big factor in a successful operation of a new office in Western Europe.

Counsel's response is inadequate. The petitioner has offered no information regarding what the beneficiary would actually be doing during the fourth and fifth components of the proposed training program, which collectively account for nearly nineteen months of the proposed twenty-four month training program. Stating that the beneficiary would be "spending time with" the manufacturers is insufficient. Moreover, it does not address the issue at hand, i.e., whether the petitioner has demonstrated that it would not place the beneficiary in a position that is in its normal course of business. The record fails to demonstrate that the activities in which the beneficiary would participate are not part of the petitioner's normal course of business. It has not established how the beneficiary's activities would differ from those of the petitioner's permanent employees.

The petitioner has failed to establish that the proposed training would not place the beneficiary in a position that is in the normal operation of the petitioner's business and in which citizens and resident workers are regularly employed. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

The director also found that the petitioner had failed to demonstrate that the proposed training program is not inconsistent with the nature of the petitioner's business. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(B) precludes approval of a petition in which the proposed training program is incompatible with the nature of the petitioner's business or enterprise.

The evidence of record indicates that the training program involves training the beneficiary in the petitioner's business. The AAO finds no indication that such is not the case. Accordingly, the AAO finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(B) and withdraws the director's comments to the contrary.

Beyond the decision of the director, the AAO finds that the petition may not be approved for additional reasons.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(2) requires the petitioner to set forth the proportion of time that will be devoted to productive employment, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires the petitioner to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, and 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 schedules, objectives, or means of evaluation.

The petitioner has failed to set forth the proportion of time that will be devoted to productive employment. It has also failed to state the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

Nor has the petitioner established that its proposed training program does not deal in generalities, with no fixed schedules or objectives. As noted previously, the petitioner has offered no information regarding what the beneficiary would actually be doing during the fourth and fifth components of the proposed training program, which collectively account for nearly nineteen months of the proposed twenty-four month training program. Stating that the beneficiary would be "spending time with" the manufacturers is insufficient. The AAO is left with little idea of what the beneficiary would actually be doing on a day-to-day basis during this period.

In its June 19, 2007 response to the director's request for additional evidence, the petitioner submitted a printout of the user manual for the software program that its employees use in the performance of their duties. According to counsel's appellate brief, this software program is designed specifically for independent manufacturers' agents, and is used by the petitioner to manage and facilitate the flow of information on a daily basis. The petitioner submits a letter, dated August 17, 2007, attesting to the importance of this software.

However, submission of this training manual, with no explanation as to where it fits into the beneficiary's daily routine, is insufficient. The petitioner does not explain whether this manual would be used in the classroom portion of the training, or in the on-the-job training portion of the training.

The petitioner has failed to set forth the proportion of time that will be devoted to productive employment, to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, to establish that the proposed training program does not deal in generalities with no fixed schedules, objectives, or means of evaluation. It has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(2), 214.2(h)(7)(ii)(B)(3), or 214.2(h)(7)(iii)(A).

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.