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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 054 50929 Office: CALIFORNIA SERVICE CENTER Date: SEP 17 2007

IN RE: Petitioner:
Beneficiaries:



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 full service production and rental company that provides services for special events. It seeks to employ the beneficiary as a management trainee for a period of eighteen 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 three grounds: (1) that the petitioner had failed to establish that its proposed training program is not designed to extend the total allowable period of practical training previously authorized the beneficiary; (2) that the petitioner had failed to establish that the beneficiary would not be placed in a position which is in the normal operation of its business and in which citizens and resident workers are regularly employed; and (3) that the petitioner had failed to establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

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 November 9, 2005 letter of support, the petitioner described its company as follows:

[The petitioner] is a full service production and rental company providing quality and professional services for special events. We provide concert lighting, automatic turntables for live performances, corporate lighting, staging, rigging services for the entertainment industry[,] and stage line mobile trailers. We help produce a show from its inception through its completion. Our company utilizes state-of-the-art equipment.

[The petitioner] has [a] vast inventory of equipment that can fulfill our clients' production needs. From concerts and fashion shows to corporate affairs, we can create lighting designs and stages that are functional, safe[,] and aesthetically pleasing.

The petitioner set forth the goals of its proposed training program as follows:

[The petitioner] has established an in-house training program to provide our trainees with expertise in different areas of management specifically relevant to the industry we are in.

As we tap this market, we aim to introduce to the Italian market a paradigm that meets our company's standards. In doing so, we wish to offer participation to our company's Training Program.

It must be noted that our firm has established a Training Program which will allow individuals to be exposed [to] and get familiar with our policies and procedures, organizational management systems, as well as the kinds of technology and services we offer. This will assist us in ensuring that all our standardized policies and procedures will be implemented once we establish our affiliate office in Europe, particularly in Italy. Further, it is designed to strengthen and widen our market since it will give us the opportunity to have a highly qualified and knowledgeable individual to act as our representative in the new market that we are aiming to tap.

The petitioner also stated in its letter of support that the proposed training program would include the following subjects: (1) business general orientation; (2) vendor-client relationship; (3) services; and (4) delivery of services. The petitioner stated that 70% of the program would consist of academic instruction and that 30% of the program would consist of supervised training.

In the program syllabus submitted at the time the petition was filed the petitioner stated that the training program would consist of 70% "in-office work" and 30% "site activities." Specifically, the petitioner stated that the proposed training program would consist of four components. The first component of the training program, which would last for 120 days, would consist of an introduction to the petitioner's software systems, while simultaneously "learning the individual office standards." The second component of the training program, which would also last for 120 days, would consist of hands-on office management at the financial and marketing level. The third component, which would last for 180 days, would consist of hands-on experience producing stage and lighting drawings. The fourth component,

which would last for 120 days, would consist of the application of production skills, with the beneficiary making office and field visits to appropriate jobs in progress.

In his May 22, 2006 request for additional evidence, the director requested, among other items, copies of lesson plans and course materials for the proposed training program, as well as the dates of scheduled classes. The director also noted inconsistencies in the petitioner's description of its training program, stating the following:

The record contains inconsistencies. Although the petitioner states that 70% of the proposed training will be in academic instructions [sic], the record also indicates that 70% will include in-office work and 30% on-site activities. Additionally, 300 days would consist of hands-on experience. Submit explanation/clarification.

The petitioner submitted a letter of clarification that accompanied counsel's August 3, 2006 response to the director's request for additional evidence. In response to the director's highlighting of the inconsistencies contained in the initial filing, the petitioner stated the following:

[The petitioner] is offering to train and specialize the beneficiary. It is a training where the beneficiary will exp[an]d her knowledge and will learn new subjects which do relate to the field studied. 70% stated in the manual is mainly theory which applies with training therefore several manuals will be provided to help the understanding of the training.

The petitioner also stated that the proposed training program would consist of 378 days of theory and training and 162 days of productive employment. Counsel and the petitioner elected not to comply with the director's specific request for the dates of scheduled classes. Nor did they offer any explanation of their failure to provide this information.

Upon review, the AAO agrees with the director 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 its proposed training program is not designed to extend the total allowable period of practical training previously authorized the beneficiary. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(H) precludes approval of a petition which is designed to extend the total allowable period of practical training previously authorized the beneficiary.

At the time the petition was filed, the beneficiary was in F-1 nonimmigrant status. She was granted a one-year period of optional practical training, which was to last from January 20, 2005 until January 19, 2006. The instant petition was filed on December 6, 2005, and requested that the beneficiary's F-1 status, upon which basis she was granted the period of optional practical training, be changed to that of H-3. If approved, there would be no gap between the beneficiary's period of optional practical training and her H-3 status. Approval of this petition would, therefore, extend the period of time in the United States for the beneficiary to receive practical training.

Moreover, the AAO agrees with the director that the petitioner has failed to sufficiently differentiate the training program proposed here from the training she received during her period of optional practical training. According to the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, the beneficiary studied Mass Communication/Media Studies at Middle Tennessee State

University and her optional practical training was as a second audio technician in a recording studio. Counsel states the following:

[T]he training that the beneficiary will receive is separate and apart from the practical training she received while on her F-1 Student Visa in the aspect that the training she received then was with a Recording Studio while the training being offered by [the petitioner] is in Management and theory in lighting, staging[,] and live audio techniques concentrating on the audio aspect. The training that the beneficiary received with the recording studio was naturally in recording which is separate and apart from the training offered by [the petitioner].

It is our contention that the training manual . . . is sufficient to show that the knowledge and skill that would be gained from the proposed training would be in Management. . . .

Counsel, however, has failed to demonstrate, beyond simple assertions, that the beneficiary's training would be "separate and apart" from the training she received while she worked as an audio technician. The record contains no evidence regarding the duties she performed while participating in her optional practical training. Nor do the training materials of record, which include a user's manual for a Turbosound full-range professional sound reinforcement enclosure, a user's manual for a Mackie Mic/Line mixer with preamplifiers, and an operating manual for a Jands Hog 500/1000, all of which appear to be manuals for audio equipment, lend support to a finding that the proposed training program would differ from the training that the beneficiary receive while she worked as audio technician. While counsel states that the beneficiary's previous training "was naturally in recording," she has failed to explain how, and submit evidence to support her explanation, training on audio equipment in a recording studio is different from training on audio equipment at the petitioner's place of business. 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)).

For all of these reasons, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(H), which requires that the petitioner demonstrate that its proposed training program is not designed to extend the total allowable period of practical training previously authorized the beneficiary.

The director found that the petitioner had failed to establish that the beneficiary would not be placed in a position which is in the normal operation of its 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 the petitioner to demonstrate 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.

On appeal, counsel asks the AAO to "[p]lease place into consideration that the nature of the business is in stage production," and that "a portion of the training naturally must be conducted in the filed [sic] while in production." Counsel also states that "[p]roductive employment is very minimal."

The AAO disagrees. First, the AAO notes that, in the program syllabus, the petitioner stated that the beneficiary would spend 300 days, or approximately 10 months, obtaining "hands-on experience," and then an additional 120 days, or approximately 4 months, applying the production skills she has learned. The statements that the beneficiary would engage in "hands-on experience" and apply her production

skills indicate that such experiences would occur while the beneficiary was working in the petitioner's normal operation of business.

The AAO also notes that the petitioner explicitly stated in the program syllabus that 70% of the proposed training program would consist of in-office work.

The petitioner's statement in its response to the director's request for additional evidence that the beneficiary would spend 70% of her time learning "theory" did not overcome this regulation, either. As noted previously, the petitioner submitted such items as a user's manual for a Turbosound full-range professional sound reinforcement enclosure, a user's manual for a Mackie Mic/Line mixer with preamplifiers, and an operating manual for a Jands Hog 500/1000, all of which appear to be manuals for audio equipment. Operating and user's manuals for technical equipment are instructional guides; they are not used to teach theory. The petitioner has failed to demonstrate that all of its new hires would not receive such training in the normal course of business.

For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(2), which requires the petitioner to demonstrate 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.

Finally, the director found that the petitioner had failed to establish that its proposed training program 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 petitioner does not submit additional details regarding the proposed training on appeal. Rather, counsel states the following:

On the record, the submitted Response to the Request for Evidence . . . discussed the very issue that the Service is now basing their denial on. The response to [the] Request for Evidence included the type of training and supervision to be give [sic], the structure of the training program, the proportion of time that will be devoted to productive employment, the numbers of hours that will be spent, respectively, in classroom instruction and in on the job training.

The AAO disagrees. There is little evidence in the record, beyond broad outlines, regarding what the beneficiary will actually be doing on a day-to-day basis. The petitioner's inconsistencies and changes it made to the training program in response to the director's request for additional evidence further diminish any demonstration that the program does not deal in generalities with a fixed schedule.

For example, and as noted previously, the petitioner stated in its letter of support that the beneficiary would spend 70% of her time in academic instruction and 30% of her time in supervised training. However, in the training syllabus submitted with the letter of support, the petitioner stated that the beneficiary would spend 70% of her time performing in-office work and 30% of her time at "site activities." The petitioner then stated that the beneficiary would spend 120 days participating in an introduction to the petitioner's software systems and learning office procedures, 300 days gaining hands-on office experience, and 120 days applying the production skills she has learned. The petitioner did not, however, explain how either version of its 70/30 breakdown of the percentages of time fit into this calendar. Nor did it offer any details regarding the day-to-day activities of the beneficiary. While the

AAO notes that the petitioner set forth the skills that the beneficiary would learn and the objectives and principles behind the training program, it did not offer details regarding the daily tasks that the beneficiary would perform.

In response to the director's highlight of the inconsistencies in the record, the petitioner altered its program. The proposed training program was now to consist of 378 days of theory and training, and 162 days of productive employment. The petitioner did not state how, or whether, this fit into its earlier calendar (i.e., the calendar consisting of 120 days of introduction to the petitioner's software systems and learning office procedures, 300 days gaining hands-on office experience, and 120 days applying her production skills).

The AAO also finds that the record lacks evidence to support the petitioner's contention that the 378 days that the beneficiary was now to spend on "theory and training," would consist of "mainly theory." As discussed previously, the training materials that the petitioner has submitted do not involve theoretical topics. Rather, they are operating manuals for technical equipment that the petitioner uses in its business operations. The petitioner has provided no information regarding the theoretical issues the beneficiary is to study. The petitioner has failed to establish that the proposed training program does not deal in generalities.

The AAO also notes that the petitioner has failed to respond to the director's specific request for the dates of scheduled classes and offered no explanation of its failure to do so. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has failed to establish that its proposed training program has a fixed schedule.

For all of these reasons, 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of the petition, as the petitioner has failed to demonstrate that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

For all of these reasons, the AAO finds that the petition was properly denied. Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a petition that is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

As noted previously, the beneficiary studied Mass Communication/Media Studies at Middle Tennessee State University and her optional practical training was as a second audio technician in a recording studio. The petitioner has failed to sufficiently differentiate the training program proposed here from the training she received during her period of optional practical training. The petitioner has failed to demonstrate, beyond simple assertions, that the beneficiary's training would be "separate and apart" from the training she received while she worked as an audio technician. The record contains no evidence regarding the duties she performed while participating in her optional practical training. Nor do the training materials of record, which include a user's manual for a Turbosound full-range professional sound reinforcement enclosure, a user's manual for a Mackie Mic/Line mixer with preamplifiers, and an operating manual for a Jands Hog 500/1000, all of which appear to be manuals for audio equipment, lend support to a finding that the proposed training program would differ from the training that the beneficiary received while she worked as an audio technician. While counsel states that the beneficiary's previous training "was naturally in recording," she has failed to explain how, and submit evidence to support her explanation, training on audio equipment in a recording studio is different from training on audio equipment at the

petitioner's place of business. 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)). A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masuyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965).

Thus, the AAO finds that, beyond the decision of the director, approval of the petition is also precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C). 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.