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U.S. Citizenship and Immigration Services

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AUG 01 2007

FILE: EAC 07 018 50648 Office: VERMONT SERVICE CENTER Date:

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.

for 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 wine importer and distributor that seeks to employ the beneficiary as a trainee for a period of twenty-three 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 denial letter; and (3) the 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 demonstrate that the proposed training is unavailable in Italy, the beneficiary's home country; (2) that the petitioner failed to submit a statement indicating the reasons why the proposed training cannot be obtained in Italy and why it is necessary for the beneficiary to be trained in the United States; and (3) that the petitioner had failed to demonstrate that its proposed training program was not on behalf of a beneficiary who already possesses substantial training and expertise in the field.

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.

According to the training program syllabus submitted with the petitioner's October 23, 2006 letter of support, the proposed training program would last twenty-three months. At page 1, the "Training Program" states the following:

> The primary objective of [the petitioner's] training program is to provide the trainee with the knowledge and experience required for promotion to management positions, an overview of the workings of our U.S. company's successful management of marketing methodologies and the function of the requirements of an Executive/Manager employed within the [petitioner's] organization. The training program will also lend the trainee a deeper understanding of U.S. purchasing culture and distribution practices which, when added to the knowledge and experience gained through on-the-job training, will aid the trainee in his career development upon returning to Europe.

The petitioner also stated that it "is essential that our foreign offices employ university-educated specialists with a knowledge of U.S. main office procedures in order to ensure the smooth and efficient expansion of our export operations through that foreign office."

The proposed training program consists of four components: (1) management framework; (2) managing the life cycle; (3) client assessment; and (4) pricing/merchandising strategies.

The management framework component of the proposed training program would last four months. The beneficiary would receive "instruction in the day-to-day management of business as it is practiced in our New York offices." The trainee would be exposed to all facets of staff management, from time management to salary considerations, and obtain exposure to the various issues that arise on a day-to-day basis and the manager's proper method of addressing each issue. By the end of this component, the beneficiary will have learned three roles: those of senior management, those of project managers, and those of sub-project managers.

The "managing the life cycle" component of the proposed training program would last seven months. During this period of the training program, the beneficiary would be given the opportunity utilize his newly-acquired skills to analyze the effects of various managerial actions on profitability, morale, and staff retention. During this time period the beneficiary will master skills in the following areas: project/contract lifecycles, managing project/contract initiation, managing project/contract activities, and managing project closure. The petitioner stated that, in each skill area, the beneficiary would learn and observe U.S. practices, standards, and methods, which would include becoming versed in the regulatory framework in the particular field and learning the research skills necessary to perform assigned tasks in an effective and efficient manner.

The client assessment component of the proposed training program would last six months. During this period of the training program, the beneficiary would learn the legal and business documentation requirements for domestic and international shipments of the petitioner's products. The beneficiary would gain exposure to the petitioner's existing clients and be privy to meetings and consultations between marketing and development representatives. The petitioner stated that, by the end of this component of the proposed training program, the beneficiary would be able to appropriately exercise his ability to assist in serving and assessing client needs by utilizing his knowledge of marketing; understand the variables to be considered when assisting in the generation of proposals and presenting those

proposals to particular clients; and gain an understanding of how clients are classified and the basic documentation that must be generated.

The pricing/merchandising strategies component of the proposed training program would last six months. During this component the beneficiary would receive instruction on pricing, which would entail skills in financial analysis. By the end of this component, the beneficiary will have learned how to arrive at realistic and profitable pricing estimates; what factors to consider when making determinations regarding price estimates; and how to draw conclusions regarding the positive and negative consequences of individual actions.

The petitioner stated that, throughout the program, the beneficiary would be able to "compare between foreign and U.S. standards and practices." It also stated that, upon completion of the proposed period of training, the beneficiary would be "well prepared to assume a managerial-level position with comparable offices located in the trainee's home country of Italy and shall be better able to provide appropriate advice to staff and fellow management regarding operations and productivity issues." The petitioner also set forth the type of supervision the beneficiary would receive, the means of evaluation, and the type of classroom instruction to be received.

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 not established that the training was not available in the beneficiary's home country. The AAO agrees. 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.

In his denial, the director stated the following:

> The proposed training is intended to aid the trainee in his/her career at one of the company's offices in Europe. The Service is not persuaded that skills and knowledge gained through on-the-job training in the U.S. cannot be learned at one of the company's European offices. Since the head of the office of the petitioner is located in Italy, it seems unlikely that similar training is unavailable there. The record does not reasonably establish that the beneficiary would be unable to learn corporate procedures for management, product development, trade in various countries, or engagement with clients somewhere other than the United States. The petitioner has not explained why such training is unavailable abroad.

On appeal, counsel states the following in response:

> The training program proposed for [the beneficiary's] participation is specifically focused upon his comprehension of our in-house, U.S.-based [petitioner] management and marketing processes and procedures. Accordingly[,] USA-based management and marketing concepts are best observed and learned while physically present in the United States. The Service's assumption that [the petitioner's] management and marketing

> practices could just as simply be taught at one of the [petitioner's] foreign offices is erroneous. . . .

The AAO agrees with the director's finding that the petitioner has failed to meet its burden of proof in this regard. First, the AAO notes that the fact that the training cannot be taught at one the petitioner's foreign offices is irrelevant. Whether the petitioner itself offers similar training in Italy is not the issue; the question is whether the training unavailable anywhere in Italy, irrespective of whether it would be provided by the petitioner or another entity.

Moreover, the AAO finds counsel's explanation that the beneficiary would be learning American management and marketing process and procedures insufficient. Simply stating that business practices in the United States differ from those practiced in Europe does not establish eligibility. The petitioner has not explained how management, marketing, and business development processes and procedures in the United States differ from those in Europe; it has simply stated that they differ. 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).

Finally, the AAO notes that no evidence beyond the statements of counsel and the petitioner have been submitted to establish that the training is unavailable in Italy. *Matter of Soffici* at 165.

Accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) or 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*).

The director found that the beneficiary already possesses substantial training and expertise in the proposed field of training. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

The AAO notes first that the beneficiary was previously issued a J-1 visa so that he could receive training at the Eber Brothers Wine and Liquor Corporation, which is inconsistent with a finding that the beneficiary does not already possess substantial training and expertise in the proposed field of training. In his denial, the director stated the following:

> The petitioner claims that the beneficiary does not currently possess skills related to the training. The record shows, however, that the beneficiary has a degree in Foreign Trade. The beneficiary's degree supports [a] finding that he/she already has knowledge of trade and policy in various countries.
>
> In addition the beneficiary has engaged in a J1 specialized training exchange program which allows practical experience as the training format. The specific J1 program focused on the practical application of international business/trade/commerce while working at an organization in the wine and liquor industry. The record supports a finding

> that the beneficiary already possesses knowledge and skills in the proposed field of training.

On appeal, counsel states the following:

> [The beneficiary's] previous J1 training lent him an understanding and fundamental exposure to the wine industry in general, but did not provide any [company name withheld] exposure which would, under the proposed program of training, consist of introduction and familiarity with our company's existing clients, vendors, marketing policies[,] and management strategy.

The AAO does not agree with counsel's analysis. A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masauyama*, 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). The question is whether the beneficiary already possesses substantial training and expertise in the proposed field of training, not whether he possesses training and expertise regarding the petitioner's company. The beneficiary possesses a degree in foreign trade, and has completed an eighteen-month J-1 exchange training program in the wine and liquor industry. The record establishes that he has substantial training and expertise in the field. Accordingly, approval of the petitioner's proposed training program id precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

Finally, counsel contends that the director erred by not issuing a request for additional evidence. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to again supplement the record with new evidence.

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.