

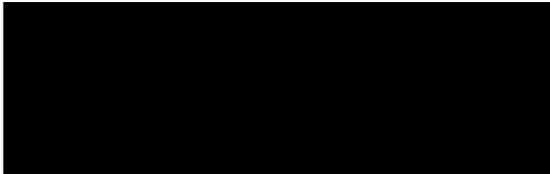


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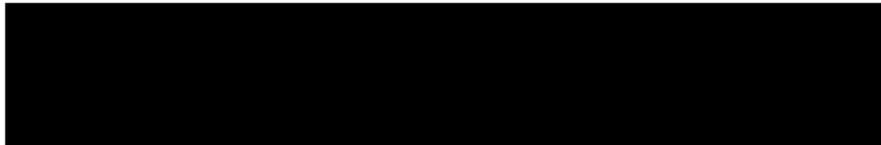


FILE: WAC 07 800 00118 Office: CALIFORNIA SERVICE CENTER Date: JUL 31 2007

IN RE: Petitioner: [Redacted]
Beneficiaries: [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:



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. 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 an automobile sales and service company that seeks to employ the beneficiary as a trainee for a period of five 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 six grounds: (1) that the petitioner had failed to describe the type of training and supervision to be given, and the structure of the training program; (2) that the petitioner had failed to set forth the proportion of time that will be devoted to productive employment; (3) that the petitioner had failed to show the number of hours to be spent, respectively, in classroom instruction and in on-the-job training; (4) that the petitioner had failed to demonstrate that the proposed training is unavailable in the beneficiary's home country; (5) that the petitioner had failed to indicate the source of any remuneration received by the trainee; and (6) 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.

According to the training program syllabus submitted with the petitioner's letter of support, the proposed training program would last 160 days and consists of three components: (1) used car evaluation; (2) used car auction; and (3) marketing.

The used car evaluation component of the proposed training program would last ninety days. The beneficiary would work directly under the supervision of the used car manager. According to the petitioner:

In order for the Beneficiary to receive this training, the used car manager will take her through the way he evaluates any automobile which is brought out to the dealer for trade in. The used car manager will show [the beneficiary] the exact procedure that must be taken in order to evaluate any particular automobile. The used car manager will show the Beneficiary the special Actual Cash Value (ACV) forms used by the Petitioner in evaluating used cars.

The petitioner then described the process of evaluating a used car, which involves seven steps: (1) walking through the car and citing its flaws; (2) going through its interior; (3) "staring [at] the vehicle," which includes evaluating the car's brakes and clutch; (4) evaluating the drivability of the vehicle, which involves showing the beneficiary how to listen to the engine; (5) searching the internet for warranty warnings and recalls on similar vehicles; (6) entering the vehicle identification number (VIN) into a computer to search for any potential insurance issues, such as collisions or theft to the vehicle; and (7) reading the VIN in order to determine make, place the car was built, and the year the car was built.

The used car auction component of the proposed training program would last forty days. According to the petitioner:

The second section of the training consists of purchasing used cars through car auctions located though out [sic] the Mid Western states, as well as in Pennsylvania. The used car manager, and if he is not available, then general manager as well as the sales manager, will train the Beneficiary how to attend used car auctions, and more importantly how to purchase used cars through the used car auction. . . .

The petitioner then described the skills that the beneficiary would be taught during this component of the proposed training program: (1) how to register for an auction; (2) how to search through lists of vehicles prior to the auction; and (3) how to walk through the car lots at the auction and look at the cars, which involves looking at the cars, starting the cars, how to block the exhaust pipes in order to determine whether the car is running properly, and bidding for cars.

The marketing component of the proposed training program would last thirty days. Specifically, this portion of the training program would consist of the following:

The general manager and the sales manager will train the Beneficiary how to market the vehicles. They will train the Beneficiary how to place the cars in the showroom. The other items [on which] they will train the Beneficiary will consist of placing

advertisements through out [sic] the paper publications, as well as through the internet, particularly, e-bay.com

In her January 17, 2007 response to the director's request for additional evidence, counsel stated that the reason the petitioner is proposing this training program is because it wishes to expand its business to the Persian Gulf region. Counsel stated that she believes it can sell used cars with high rates of return in the region as well as purchase specialty used cars that are unavailable in the United States. The petitioner stated that it had chosen the beneficiary to manage its office in the Persian Gulf region.

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 describe the type of training and supervision to be given, and the structure of the training program. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(B)(I) requires a statement from the petitioner describing the type of training and supervision to be given, and the structure of the training program.

In her denial, the director stated the following:

While the petitioner has provided a basic schedule and general objectives the schedule and the objectives are vague, with little detail about how the training will actually occur and how the beneficiary will be spending her days.

On appeal, counsel offers no additional information regarding the proposed training program's training and supervision. Counsel states that the training program is bona fide, and that the petitioner has provided a detailed training program. However, the AAO notes, as did the director in her denial, that the training program materials offer little information as to what the beneficiary will actually be doing on a day-to-day basis.

For example, the AAO notes that the used car evaluation component of the proposed training program would last ninety days. However, the AAO has no information beyond the petitioner's summary of how to evaluate a used car regarding what the beneficiary would actually be doing during this time. Nor has the petitioner offered any explanation of the type of supervision that the beneficiary would receive, other than to state who would be doing the supervising. For example, the petitioner has not indicated whether the beneficiary would spend each day completely under the supervision of the designated manager, whether she would operate independently for a certain amount of each day, or whether the amount of supervision she would receive would decrease as she improved her proficiency.

Counsel's submission on appeal of *The Black Book* and the *2006 Suzuki Pocket Guide* do not aid the AAO in making its determination on these matters, as counsel has offered no additional details regarding the duties on which the beneficiary would actually be spending her time. Counsel has not indicated where these materials fit into the petitioner's proposed training program. Nor do counsel's statements that there is no doubt that the petitioner exists or that its managers are bona fide, or that the training program is bona fide aid the petitioner, as the director did not make a finding to the contrary. Rather, the director found that the petitioner had failed to submit a statement from the petitioner describing the type of training and supervision to be given, and the structure of the training program, as required by the regulation.

The petitioner has submitted no evidence to overcome this ground of denial on appeal. Accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(B)(1).

The director also found that the petitioner had failed to set forth the proportion of time that will be devoted to productive employment. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(B)(2) requires a statement from the petitioner setting forth the proportion of time that will be devoted to productive employment.

Counsel does not address this issue on appeal. Accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(B)(2).

The director also found that the petitioner had failed to show the number of hours to be spent, respectively, in classroom instruction and in on-the-job training. The regulation at 8 C.F.R. § 214.2(h)(7)(B)(3) requires a statement from the petitioner showing the number of hours to be spent, respectively, in classroom instruction and in on-the-job training. As was the case under 8 C.F.R. § 214.2(h)(7)(B)(2), counsel does not address this issue on appeal. There is still nothing in the record to indicate the number of hours the beneficiary will spend in classroom instruction and in on-the-job training. Accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(B)(3).

The director also found that the petitioner had failed to demonstrate that the proposed training is unavailable in the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(B)(5) requires a statement from the petitioner indicating the reasons why the proposed training cannot be obtained in the alien's home country and why it is necessary for the alien to be trained in the United States.

On appeal, counsel states the following:

The Petitioner based the reason for the training on the fact that the Petitioner intends to establish a presence in the Middle East . . . The Petitioner's business methodology is unique to itself. Ass [sic] such the Beneficiary may not receive the same training outside of the United States. . . .

In order for the Beneficiary to be able to run and manage the business in the Middle East, she needs to first receive training about the business of the Petitioner. The Petitioner does not have any business outside of the US. Therefore, the training is not available outside the US.

However, counsel has misunderstood the basis of the director's denial on this ground. The question to be addressed when attempting to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) is not whether the petitioner offers this training in the alien's home country. Whether the petitioner itself offers similar training in the beneficiary's home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiary's home country, irrespective of whether it would be provided by the petitioner or another entity. The petitioner has submitted no evidence indicating that this type of training is not available in the beneficiary's home country. Accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(5).

The director also found that the petitioner had failed to indicate the source of any remuneration received by the trainee. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires the petitioner to indicate the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. The petitioner has established that it will provide remuneration to the beneficiary, and the AAO finds reasonable the petitioner's explanation of its motivation for providing the training program. Accordingly, the AAO withdraws the portion of the director's decision to the contrary. As such, the AAO finds that the petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(6).

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.

As noted previously, the director stated that the schedule and general objectives provided by the petitioner were vague and included little detail about how the training would actually occur and how the beneficiary would be spending her days. The director also stated that there is no provision for evaluation anywhere in the record. The AAO agrees, and incorporates here its previous analysis of the regulation at 8 C.F.R. § 214.2(h)(7)(B)(1), as the evidence of record offers little information as to what the beneficiary will actually be doing on a day-to-day basis.

Counsel has offered no additional information regarding the proposed training program's training and supervision on appeal. Counsel and the petitioner have been placed on notice via the director's denial that such additional details are necessary, and they have elected not to submit them. Moreover, the AAO notes that there is still no information regarding the means of evaluation. Accordingly, approval of this petition is precluded by 8 C.F.R. § 214.2(h)(7)(B)(1).

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.