U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 06 250 50575 Office: VERMONT SERVICE CENTER Date: MAR 31 2008

IN RE: Petitioner: [redacted]
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:

[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.

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 luxury resort that seeks to employ the beneficiary as a country club 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 notice of intent to deny (NOID) the petition; (3) the petitioner's response to the director's NOID; (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 establish that the training program in fact exists; (2) that the petitioner had failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (3) that the petitioner had failed to set forth the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; (4) that the petitioner had failed 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; (5) that the petitioner had failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; and (6) that the petitioner had failed to establish that the proposed training is unavailable in Bulgaria, the beneficiary's home country.

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 August 21, 2006 letter of support, the petitioner stated the following:

> [The petitioner], a world class luxury resort, is located in prestigious Palm Beach Gardens, Florida. We are a major luxury golf and waterfront environment resort of 600 home sites nestled into 720 pristine acres . . . [the petitioner's] 66,000 square foot clubhouse offers formal dining facilities, a casual grill room and 19th hole for lighter fare.

According to the program syllabus submitted at the time the petition was filed, the training program would consist of two distinct portions: (1) Formal Classroom Instruction; and (2) Rotational Assignments. The petitioner stated that during formal classroom instruction, the beneficiary would receive "an in depth and concentrated overview of Gated Community Governance and Operation." The rotational assignment portion of the proposed training program would consist of seven divisions: (1) Property Owners' Association (lasting 12 weeks); (2) By-Laws (lasting 7 weeks); (3) Strategic Planning (lasting 15 weeks); (4) Club Financial Systems (lasting 7 weeks); (5) External Community Affairs (lasting 5 weeks); (6) [The Petitioner's] Realty (lasting 5 weeks); and (7) Human Resources (lasting 10 weeks).

On appeal, counsel offers additional information. In a section of his appellate brief entitled "Daily Breakdown," counsel states that the beneficiary will spend four hours per day in classroom training; two hours per day in on-the-job training; and one hour per day in productive employment. There will also be homework and "textual readings," as well as a one-hour break.

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.

As a preliminary matter, the AAO notes that the director found that the petitioner had failed to establish that a training program in fact exists. The AAO finds no basis for this conclusion, and withdraws this portion of the director's decision. The petitioner has submitted ample evidence to demonstrate the existence of a training program.

The director also found that the petitioner had failed to establish that the 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.

For example, much of the information submitted by the petitioner is 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 fourth division of the rotational assignment portion of the proposed training program would last 15 weeks. The petitioner's description of how the beneficiary would spend this period of time consists of a four-sentence paragraph (two sentences are added on appeal). The petitioner states that, during this time, the beneficiary would receive an overview and achieve a basic comprehension of the procedures used to identify, formulate, and implement goals for the future, with emphasis to be placed on the interplay between local demographic and economic trends, political developments, environmental concerns, and budgetary requirements. Such a vague, generalized description does not explain what the beneficiary would actually be doing on a day-to-day basis. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program, but the description provided is inadequate.

The petitioner's description of much of the rest of its proposed training program suffers similar deficiencies. The first division of the rotational assignment portion of the proposed training program would last 12 weeks. The petitioner's description of how the beneficiary would spend this period of time is presented in summary form. Although the petitioner supplements the rotation on appeal with the training of state and local housing laws, the program is still only generally outlined. The second division of the rotational assignment portion of the proposed training program would last seven weeks. The petitioner's description of how the beneficiary would spend this period of time consists of a four-sentence paragraph (three sentences are added on appeal). The seventh division of the rotational assignment portion of the proposed training program would last ten weeks. The petitioner's description of how the beneficiary would spend this period of time consists of a summary outline without specific descriptions of the daily training program.

The petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiaries would actually be doing, on a day-to-day basis, for much of the proposed training program. It has failed to establish that its proposed training program does not deal in generalities.

Finally, the AAO notes that, on appeal, counsel states that the beneficiary will spend four hours per day in classroom instruction. Counsel provides a list of fifteen texts that will be read and covered in classroom instruction and debate, a list of several videos, and a list of eleven audio books to which the beneficiary will listen. However, counsel does not explain how any of these materials will be worked into the training program. He does not state when any of the texts will be used (i.e., during which rotational assignment). The AAO finds this description deficient. Again, the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program. However, this description is inadequate.

Nor has the petitioner established that its proposed training program has a fixed schedule. The program syllabus submitted at the time of filing states that the proposed training program will last between 18 and 24 months. It also states that the rotational assignment portion of the proposed training program will last between 13 and 14 months. Such uncertainty is not indicative of a training program with a fixed schedule.

The petitioner 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 the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(*3*) requires a statement from the petitioner that shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

The director was correct to deny the petition on this ground, as the petitioner had not made clear at the time the decision was issued the number of hours to be spent in classroom training and in on-the-job training. Although the AAO has found the initial submission deficient (see *supra*), the record does now contain this information, so the petitioner has satisfied this particular criterion, and the AAO withdraws the portion of the director's decision finding otherwise.

The director also found that the petitioner had failed 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. **The AAO agrees. The regulation at**

8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(*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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(*3*) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The AAO incorporates its previous discussion regarding the vague and generalized description of the training program contained in the record, particularly regarding the rotational assignment portions of the training. Without additional information regarding what the beneficiary will actually be doing while he is being rotated through seven divisions of the petitioner's business, the AAO concludes that he will in fact be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, and that he will engage in productive employment beyond that incidental and necessary to the training. The petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(ii)(*2*), 214.2(h)(7)(ii)(A)(ii)(*3*), or 214.2(h)(7)(iii)(E).

The director also found that the petitioner had failed to establish that the proposed training is unavailable in Bulgaria, 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 December 19, 2006 letter in response to the director's NOID, counsel submitted two letters (which the AAO notes are identical to one another) as expert opinions, stating that they were "particularly persuasive due to the high level of standing of the individuals these opinions are coming from." The first letter, dated December 28, 2006, is from [redacted] President of the Florida Chapter of the Club Managers Association of America (CMAA). The second letter, dated December 29, 2006, is from [redacted], Managing Director of the Florida Chapter of the CMAA. Both authors state that they "can say with absolute certainty that [the petitioner's] training is not available anywhere abroad."

However, the AAO finds that an inadequate factual foundation to support these opinions has been established. The authors do not note the location of the petitioner, nor indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor do they describe the training program in any meaningful fashion. The extent of their knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of their pronouncements and this submission is therefore not probative of any of the criteria at issue here. Nor have the authors submitted any industry data or other information to support any of their opinions. Moreover, as the text of these letters is identical, it is unclear who actually wrote them. It appears as though one person wrote the text and then provided it to both individuals as a template. As such, the evidentiary weight of these letters is diminished.

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).

On appeal, counsel submits a third letter. In his May 20, 2007 letter, [redacted], President of the Capriccio Club in Sofia, Bulgaria, states his opinion that the petitioner's training program

> teaches trainees the highest skills and is most certainly training that is unavailable in our country.

Although [redacted] claims to be the President of the Capriccio Club, the AAO notes that this letter was not prepared on company letterhead. Nor does [redacted] offer any evidence, or any explanation, of his opinion—he simply states it. 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)). Again, 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.*

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 authors of these letters do not explain how the petitioner's training differs from training that the beneficiary could receive in his home country.

The petitioner 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*).

Finally, the AAO turns to counsel's statement on appeal that CIS has approved similar petitions for the petitioner. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the petitions referenced by counsel were approved based upon the same evidence contained in this record, their approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.