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U.S. Citizenship
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FILE: WAC 08 012 51814 Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2008

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.



John F. Grissom, Acting 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 The director's decision will be withdrawn and the matter remanded to the service center for issuance of a new decision.

The petitioner is a real estate service and investment firm 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 notice of intent to deny the petition; (3) the petitioner's response to the director's notice; (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 the basis of her determination that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country.

On appeal, the petitioner 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 October 9, 2007 letter of support, the petitioner stated the following:

[The petitioner] was established and incorporated in California. For the fiscal year 2006 we had a reported gross annual income of \$5,000,000, managing 11 properties to date all over Southern California.

Our primary business is in Real Estate Services and Investment; we manage and develop both commercial and residential properties in the Los Angeles County area. We have several subcontractors that support our operations and the management of our properties.

With regard to why it is offering the training program, the petitioner stated the following:

The principal purpose of the training is to provide trainees with first-hand knowledge of the rudiments of financial management and business forecasting. The training program is expected to equip [the beneficiary] with a solid foundation in these areas. It will ensure that the practices and policies of our company are observed and implemented in our branch in the Philippines. . . .

The petitioner explained that its proposed training program would be composed of six modules: (1) Orientation; (2) Statistical Forecasting; (3) Modeling Financial Series; (4) Multivariate Data Analysis; (5) Sales Forecasting (also labeled by the petitioner as module 3); and (6) Budget Forecasting (also labeled by the petitioner as module 4).

The sole issue on appeal is whether the petitioner has met its burden of proof in establishing that it has complied with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to demonstrate that the proposed training is not available in the alien's own country, and 8 C.F.R. § 214.2(h)(7)(ii)(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.

In its April 4, 2008 response to the director's request for additional evidence, the petitioner stated the following:

The trainees will be trained on pertinent managerial techniques specific to our company. In addition, the trainees will also be educated and exposed to the different policies and standards of our company as part of their support training.

The trainee will be taught how to closely work with clients to provide full value for their business. At the end of the program, the trainee will have sufficient knowledge on the company's managerial strategies specifically designed and developed for our business and this therefore is unavailable in the Alien's home country.

The question to be addressed when attempting to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 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.

In the present case, however, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices. Moreover, the petitioner in this particular case has

submitted evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another facility. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in the Philippines, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Therefore, the petitioner has overcome the grounds of the director's denial, and the director's decision to the contrary is withdrawn.

However, the petition as presently constituted may not be approved for four reasons. As the director did not address these four reasons in her denial, the petition will be remanded for further action.

The regulation at 8 C.F.R. § 214.2(h)(7)(2)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States. As noted above, the AAO has found the petitioner in compliance with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Again, the question to be addressed when attempting to satisfy these two criteria 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.

However, in the present case and also as noted above, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.

Having made such a demonstration, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiary will be able to use her newfound knowledge. Since her newfound knowledge (the knowledge that cannot be obtained in the Philippines) will be specific to the petitioner, an operation run by the petitioner would be the only setting in which he would be able to use the knowledge. The petitioner has asserted that the beneficiary will utilize her skills at the petitioner's "future affiliate branch" in the Philippines. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize his skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training. The record, as presently constituted, contains no information or evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any evidence, beyond the assertions of record, to demonstrate that it is in the process of setting up operations in the Philippines. 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)). The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4). Accordingly, the petition will be remanded for further action on this item.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program. The information contained in the record of proceeding is extremely vague, and leaves the AAO with very little idea of 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 hour, or even every single day, of the training program. However, it must explain how the beneficiary will actually be spending her time while participating in the training program; generalized objectives are insufficient. Here, the petitioner has failed to provide a

meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program. While the petitioner has submitted a 127-page training manual, it has not connected the reading materials contained in the manual to the beneficiary's daily activities in any meaningful way. For example, it is unclear whether these reading materials will be read during class, or whether the beneficiary will be expected to have read them before class. Nor are there any sample lesson plans, which would allow the AAO to connect these reading materials to the training program. Nor is it clear how the petitioner will be able to stretch this material to cover a period of 24 months. Nor is the record clear as to how long the training program will actually last. Although the petitioner states on the Form I-129 and in its letter of support that it will last 24 months, in the training manual it states that it will last 18 months. For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). Accordingly, the petition will be remanded for further action on this item.

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 AAO here incorporates its previous discussion regarding the petitioner's vague and generalized description of its training program. While the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary 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. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). Accordingly, the petition will be remanded for further action on this item.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified. The petitioner stated in the training manual that "the Operations Manager is in-charge of full supervision," and that "each Course and/or program will be facilitated by an individual expert in that field. . . ." However, there is no indication in the record of how the operations manager's normal job duties would be accomplished while she is supervising the beneficiary. Nor has any evidence regarding the qualifications of those "individual experts" been submitted. Without a description of which duties would be delegated, and the persons to whom the various duties would be delegated, the AAO cannot, in this particular case, find that the petitioner has established that it has the personnel to provide the training specified in the petition. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G). Accordingly, the petition will be remanded for further action on this item.

Accordingly, the director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issues of (1) whether the petitioner has established that the proposed training would benefit the beneficiary in pursuing a career outside the United States¹; (2) whether the petitioner has adequately described the type of training and supervision to be given, and the structure of the training program, and resolved the issues raised by the AAO in its discussion of this issue; (3) whether the petitioner has established that its proposed training program does not deal in generalities with no fixed schedule,

¹ Specifically, the petitioner must submit documentary evidence of its plans for expansion into the Philippines. Absent such information, the record does not establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States, since the proposed training is specific to the petitioner and the only setting in which he would utilize these skills would be for the petitioner in the Philippines.

objectives, or means of evaluation; and (4) whether the petitioner has established that it has sufficiently trained manpower to provide the training specified. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 6, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.