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U.S. Citizenship
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Services

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FILE: WAC 08 064 50201 Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2008

IN RE: Petitioner:
Beneficiary: [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:

[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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a student international placement agency with two employees that seeks to employ the beneficiary as a management trainee for a period of two years. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 demonstrate that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition; (2) that the petitioner had failed to set forth, with specificity, the type of training and supervision to be given, and the structure of the training program; (3) that the petitioner had failed to set forth the proportion of time to be devoted to productive employment; (4) that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; (5) that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training; (6) that the petitioner had failed to establish that the proposed training is unavailable in 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 letter of support, submitted to the service center on December 31, 2007, the petitioner stated the following:

> [The petitioner] was established in August 2007 as a student international placement agency that provides management training in both the recruitment and placement industry. We employ a carefully studied program of improved marketing, training, and quality controls that result in an ever growing market share increases. . . .

In the "Company Profile" attached to the letter of support, the petitioner further explained its business model as follows:

> [The petitioner] is an international student placement agency that offers [the] opportunity to university students around the world to work with a U.S. company and live in the United States for 3-4 months. [The petitioner] works with partner organizations[s] in countries around the world to recruit qualified and skilled students to fill seasonal positions with U.S. companies.
>
> Our services include screening, preparation[,] and commitment of the workers, full insurance coverage paperwork, and 24/7 personal support throughout the term of employment. We anticipate that all program participants will gain valuable insights into [the] cross-cultural differences that underlie the global economy in today's marketplace.

With regard to why it is offering the proposed training program, the petitioner stated the following in its July 29, 2008 affidavit:

> Our intent in bringing over the beneficiary was to train her in applicable procedures so that she could return to Manila, Philippines, since she is from the Philippines, and to operate a satellite office there. It is important for our company to have a satellite office in a country from where many of the applicants come from, such as the Philippines, as they are the first point of contact with potential temporary workers. Thus, the type of training was designed to provide for [the] future needs of the company and to work on behalf of this company.

The petitioner explained that the proposed training program would last 24 months and consist of eight sessions: (1) an untitled first session; (2) Documentation; (3) Operations/Quality Control; (4) Management Techniques; (5) Human Resources/Personnel; (6) Administration; (7) Management Techniques (a review of the fourth session); and (8) Reviews, Wrap-Up Meetings, and Debriefing.

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.

The director found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees.

In its June 18, 2008 response to the director's request for additional evidence, the petitioner stated the following:

> The petitioner does not employ full-time trainers. The petitioner, in all his capacity will be the one to conduct training and will provide the on-the-job training as well. . . .

In her July 1, 2008 denial, the director stated the following:

> The petition states that the petitioner has two employees. It seems that if one of those individuals will be providing full-time training, it would be difficult to maintain the petitioner's business for the duration of the 24-month training program. . . .

The AAO agrees with the director. The petitioner has not established that it has sufficiently trained manpower to provide the training. The petitioner has not explained how, if it does not employ full-time trainers, the individual who will provide the training will perform his normal duties. In a company of two employees, the loss of one of those employees to provide full-time training for a period of 24 months is significant, and the petitioner has failed to explain how the normal duties of the individual who will provide the training will be accomplished. The petitioner has failed to establish that it has sufficiently trained manpower to provide the training outlined in the petition. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition.

The director also found that the petitioner had failed to set forth, with specificity, 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)(ii)(B)(*1*) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

Despite the petitioner's assertions to the contrary, the information contained in the record of proceeding remains 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. Goals and objectives are presented, but lists of goals and objectives are not substitutes for descriptions of how those goals and objectives are to be accomplished; the petitioner has not explained how the beneficiary will actually be spending her time. The petitioner's description of how the beneficiary would spend her period of time consists of summary outlines without specific descriptions of the daily training program. 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. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing on a daily basis while participating in the proposed training program. Regarding supervision, the AAO incorporates here its previous discussion regarding the deficiencies contained in the petitioner's description of the supervision that the beneficiary will receive. For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*).

The director also found that the petitioner had failed to set forth the proportion of time to be devoted to productive employment, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(*2*). The AAO disagrees. The petitioner has asserted that the proposed training program will not involve productive employment. Given the goals and objectives of the training program as set forth in the record of proceeding, the AAO finds this assertion reasonable. Therefore, the AAO withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(*3*). The AAO agrees.

In her April 26, 2008 request for additional evidence, the director specifically requested that the petitioner "[s]how the number of hours that will be devoted to classroom instruction [and] on-the-job training. . . ." While the petitioner's response did include a breakdown of how many total hours the beneficiary would spend on the various sessions and sub-sessions of the training program, the petitioner did not state, explicitly, the number of hours that would be spent, respectively, in classroom instruction and in on-the-job training. Such information is required by the regulation, but the petitioner has failed to provide it. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(*3*).

The director also found that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(*6*). The AAO disagrees. The petitioner indicates that the beneficiary will receive an allowance of $500 per week. The petitioner has also described its plans for the beneficiary after she returns to the Philippines. While those plans may not have satisfied other regulatory criteria at issue in this case, they do satisfy C.F.R. § 214.2(h)(7)(ii)(B)(*6*), and the AAO withdraws that portion of the director's decision finding otherwise.

The director also found that the petitioner had failed to establish that the proposed training could not be obtained in the Philippines, the beneficiary's home country. The AAO disagrees. 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.

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 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 demonstrated 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*). The AAO, therefore, withdraws that portion of the director's decision finding otherwise.

Pursuant to the above discussion, the AAO agrees with the director's decision that the proposed training program does not meet the regulatory requirements for approval of the nonimmigrant visa.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*4*) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(*4*) requires the petitioner to describe the career abroad for which the training will prepare the alien.

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 as noted above, the petitioner has demonstrated that the reason for creation of the training program is to train the beneficiary on the petitioner's own business practices so that she may operate a satellite office in the Philippines.

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 she would be able to use the knowledge (again, if the knowledge can be used at employment other than for the petitioner, it is therefore not wholly specific to the petitioner's business, and therefore can be obtained in the Philippines).

However, the petitioner has failed to establish that there is in fact exists a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. As the petitioner has not demonstrated that it has already established its satellite office in the Philippines, there exists no setting in which she would be able to utilize her newfound knowledge. 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 setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that, at the time the petition was filed, it actually had plans to commence operations in the Philippines upon completion of the training. The record, as presently constituted, contains no documentary evidence of the petitioner's expansion plans at the time the petition was filed, beyond training the beneficiary. Nor has the petitioner submitted any documentary evidence, beyond its own assertions, 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*). 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.

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.