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U.S. Citizenship
and Immigration
Services

by



FILE: EAC 08 089 51700 Office: VERMONT SERVICE CENTER Date: **NOV 25 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 law firm that seeks to employ the beneficiary as a paralegal trainee for a period of 12 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 three grounds: (1) that the petitioner had failed to establish that the proposed training is unavailable in the beneficiary's home country; (2) that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the proposed training; and (3) that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

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.

The petitioner, a law firm, stated the following in its January 25, 2008 letter in support of the petition:

[The petitioner's] extensive immigration department deals with all aspects of Immigration law, which include Political Asylum, Deportation, Sponsorship, CSS/LULLAC, and Family and Employment based Adjustment of Status (green card) cases. We also provide corporate immigration services, and are well versed in applications for a wide variety of visa categories.

The real estate department specializes in the purchase and sale of private and commercial property. Among our private property services, we also handle refinances. For clients seeking to buy, sell, or lease commercial property, we draft and amend leases and help create sublease agreements. In doing this, we inform our clients as to their rights and privileges in these types of transactions, and ensure that agreements between parties protect our clients in the best way possible.

While the firm's primary areas of practice are Immigration and the purchase and sale of real property, we also practice in the area of civil litigation, criminal, and family law.

With regard to its objective in providing this training program, the petitioner stated the following:

For this particular H-3 Visa application, our Beneficiary will be trained as a paralegal for one year. After the training, we would like to have [the beneficiary] open a branch office in Pakistan. The office would be supplemental to our own, in that it would assist our clients in U.S. immigration matters and the purchase and sale of Real Estate. . . .

* * *

Our foreign office will provide Pakistani citizens with the resources and legal advice to visit the U.S. The Pakistan real estate trend has soared also through the market due to the high number [of] Pakistani Americans willing to buy property back home. Being that the value of property is comparatively less than that of the U.S. dollar, many Pakistani Americans are interested in investing in real property such as acres of land and flats. Our office in Pakistan will be an asset to its citizens because the beneficiary will be able to initiate negotiations between Pakistani citizens and Pakistani Americans.

In the outline submitted at the time the petition was filed, the petitioner stated that the proposed training program would last twelve months and consist of seven modules. The first module, entitled "Legal Writing and Analysis," would last six weeks. The second module, entitled "Ethics," would last four weeks. The third module, entitled "Legal Research," would last eight weeks. The fourth module, entitled "Real Property and Contracts," would last six weeks. The fifth module, entitled "Business Organization," would last six weeks. The sixth module, entitled "Business Management," would last six weeks. The seventh module, entitled "Immigration Law," would last twelve weeks.

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 the proposed training is unavailable in Pakistan, the beneficiary's home country. The AAO disagrees. 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.

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. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in Pakistan, 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.

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 disagrees. The petitioner has provided the names and qualifications of the individuals who will provide the training and, on appeal, has provided evidence of its physical plant. The AAO finds that the information submitted by the petitioner has overcome the concerns of the director and therefore withdraws that portion of the director's decision finding otherwise.**

The director also found that the petitioner had failed to adequately describe the career abroad for which the training will prepare the beneficiary. The AAO agrees. 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 previously, the petitioner stated in its letter of support that the beneficiary will assist the petitioner in establishing an office in Pakistan. In its May 5, 2008 response to the director's request for additional evidence, the petitioner stated the following:

Please be advised that [the beneficiary] is being trained specifically to gain enough knowledge to open an office for our company in Pakistan. . . .

In his May 28, 2008 denial, the director stated the following:

Given the non-existence of the petitioner's foreign business operations, a training program geared toward the petitioner's specific practices and operational way of doing business has no merit. Having the intent to commence overseas business operations upon the beneficiary's successful completion of the U.S. training is not a valid basis for seeking an H3 alien trainee. . . .

The AAO agrees with the director. 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 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 his newfound knowledge. Since the newfound knowledge (the knowledge that cannot be obtained in Pakistan) 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 the basis of the AAO's determination that the training cannot be obtained in Pakistan is absent).

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 purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner.

As the petitioner has not yet established its office in Pakistan, there exists no setting in which the beneficiary would be able to utilize his 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 his skills would be for the petitioner in Pakistan, the petitioner must document that, at the time the petition was filed, it actually had plans to commence operations in Pakistan 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 Pakistan. 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).

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 three additional reasons.

The regulation at 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(3) requires the petitioner to set forth the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The petitioner has failed to submit such a breakdown, despite having been specifically instructed to do so by the director in

his request for additional evidence. The petitioner, therefore, has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(3). For this additional reason, the petition may not be approved.

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 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. While the petitioner provides a list of objectives to be learned, it is unclear what the beneficiary would actually be doing while in the classroom or while receiving on-the-job training. For example, according to the program outline the first module of the proposed training program would last six weeks. The petitioner's description of what the beneficiary would actually be doing during this period of time consists of a three-sentence summary. Nor does the calendar, which ostensibly offers a daily breakdown of the beneficiary's activities, offer clarification. For example, the petitioner's description of what the beneficiary would be doing every day for the first two weeks of the first module consists the phrase "Laws, statutes & case decisions." Such generalized descriptions do not aid the AAO in ascertaining how the beneficiary would actually be spending his time.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. Objectives are provided, but lists of objectives are not substitutes for descriptions of how those objectives are to be accomplished. The second module of the training program would last four weeks, and the petitioner's description of how the beneficiary would spend this time consists of a one-sentence summary. The third module of the training program would last eight weeks, and the petitioner's description of how the beneficiary would spend this time consists of a two-sentence summary. The fourth module of the training program would last six weeks, and the petitioner's description of how the beneficiary would spend this time consists of a one-sentence summary. The fifth module of the training program would last six weeks, and the petitioner's description of how the beneficiary would spend this time consists of a one-sentence summary. The sixth module of the training program would last six weeks, and the petitioner's description of how the beneficiary would spend this time consists of a two-sentence summary. The seventh module of the training program would last twelve weeks, and the petitioner's description of how the beneficiary would spend this time consists of a two-sentence summary. While a list of books that will be "referenced" during the training program has been provided, the petitioner has not related this material to the training program in any meaningful way; it has not explained when, and how often, they will be referenced. The petitioner has failed to submit sample lesson plans or other evidence that would clearly explain what the beneficiary will actually be doing while participating in the training program.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every day, of the training program. However, it must explain how the beneficiary will actually be spending his 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. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of this petition. For this additional reason, the petition may not be approved.

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, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). In finding that the petitioner has failed to adequately describe the structure of the proposed training program, the AAO incorporates here its previous discussion regarding the petitioner's vague and generalized description of the training program. Again, the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every

day, of the training program. However, it must explain how the beneficiary will actually be spending his time while participating in the training program. Here it has failed to do so. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(I). 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.

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