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: WAC 07 229 51481 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 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.

Richard T. Kelly
for 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 rug importer and exporter that seeks to employ the beneficiary as an "import and export expert trainee" for a period of 24 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 three grounds: (1) that the petitioner had failed to adequately 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 to be devoted to productive employment; and (3) 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.

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 July 20, 2007 letter of support, the petitioner stated the following:

> **[The petitioner] was incorporated in California in 1999.** [The petitioner] has been importing and exporting rugs and accessory products to different countries for almost 8 years. . . .
>
> [The petitioner's] projects in extending and diversifying the business are all getting connected to the global market and specifically to the rapidly growing Asian market. As a manufacturer/wholesaler, [the petitioner] has been becoming increasingly dependent on its Asian partners. The company's presence in Asia will be the next logical step in [the] structural development of the company. Therefore, the goal of the training program is to prepare highly competitive professionals for the company's potential expansion in Asia. . . .
>
> [T]he training program will provide the trainee with a range of skills in the fields of import and export operations, sales, financial management, customer service, human resource[s] and management techniques utilized by the company. This program is designed to prepare the trainee with eventual overseas assignment.

The petitioner described the proposed training program as follows:

> The proposed training will last 24 months. The trainee will undergo academic instruction and practical training six hours per day, five days per week . . . The trainee will receive approximately 75% academic training in class instructions and discussions, and 25% of the training in written and oral presentations, and in on-the-job training.

The petitioner explained that its proposed training program would be broken into eight sections: (1) Introduction to the Company; (2) Training in Importing; (3) Training in Exporting; (4) Training in International Trade Documents; (5) Transport of Goods in International Commerce; (6) Training in International Trade Finance; (7) Training in International Negotiations; and (8) Researching Overseas Markets and Market Entry.

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 set forth, with specificity, 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*). The AAO agrees.

The director stated the following in her February 27, 2008 denial:

> While USCIS concurs with counsel that the petitioner did provide objectives and goals for the beneficiary, the schedule provided is far too vague to meet the terms of the regulations . . . The structure indicates that the training program deals in generalities. The timelines would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized to meet the terms of the regulations. . .

The AAO agrees with the director. 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. For example, the first section of the proposed training program would last two months. While the petitioner provides a list of objectives to be learned, it is unclear what the beneficiary would actually be doing during this 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 petitioner has not explained what the beneficiary will actually be doing during this time, and it is unclear how the reading material contained in the training manual will be stretched to cover 24 months of training.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour 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 day-to-day basis, for much of the proposed training program, and counsel elects not to provide additional information regarding what the beneficiary will actually be doing on appeal. It 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; and 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)(*2*) and (*3*). The AAO disagrees. The petitioner provided this information in its July 20, 2007 letter of support and supporting documentation. Accordingly, the AAO finds that the petitioner has overcome the concerns of the director in this regard, and it 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 four additional reasons.

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.

In his January 21, 2008 response to the director's request for additional evidence, counsel stated the following:

> The goal of the training is to prepare the trainee for placement abroad in the future affiliate office of the company.

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 her newfound knowledge would be for the petitioner. As the record does not indicate that the petitioner has yet established its "future affiliate office" in the Philippines, there exists no setting in which she 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 her 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 documentary evidence of the petitioner's expansion plans, beyond training the beneficiary. 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*) or 214.2(h)(7)(ii)(B)(*4*). 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 AAO incorporates here its previous discussion of the vague and generalized nature of the petitioner's description of the proposed training program. Again, while the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour of the training program, it 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. For this additional reason, the petition may not be approved.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G), requires the petitioner to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. In response to the director's request for additional evidence, counsel stated that [redacted], the petitioner's president, would oversee the training, and supervise the beneficiary at all times. The AAO notes that, according to the petitioner's Form DE-6, Quarterly Wage and Withholding Report, the petitioner had seven full- and part-time employees in July 2007, the month the petition was filed. In a small company, the diversion of a single individual for a total of 24 months is significant, particularly when that individual is the president of the company. There is no indication in the record of how the president's normal job duties would be accomplished while he is supervision the beneficiary. 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. For this additional reason, the petition may not be approved.

Finally, the AAO notes that, in his January 21, 2008 response to the director's request for additional evidence, counsel stated the following:

> The use of [the] Internet for medical research and management is essential to provide the best medical services to the patients. . . .
>
> Computer use in the medical field is also necessary as experience and solutions in handling unknown diseases and sickness can easily be accessible to the medical providers worldwide. . . .

However, given the goals and objectives of the petitioner as set forth in the record of proceeding, it is unclear to the AAO why the beneficiary would need to handle "unknown diseases and sicknesses," or why she would need to use the internet for "medical research and management." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent

objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. 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.