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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 08 011 51050 Office: CALIFORNIA SERVICE CENTER Date: **NOV 30 2009**

IN RE: Petitioner: [Redacted]
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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Khew
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 petitioner is a dealer and distributor of home and commercial water purification products 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 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 evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and, (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on multiple grounds: (1) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; and, (2) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

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 explained in its letter of support, dated September 24, 2007, that it wishes to provide the trainees with "expertise in all areas of water filtration and water softening systems in the U.S." The petitioner was established in 1990 and "operated with 18 master distributors and generates a gross annual income of excess of \$1 million." The petitioner explained that it has offices in "numerous cities in California and Nevada, has started opening offices in Hawaii, and plans to open overseas to provide a better service to worldwide clientele." The petitioner also explained that the training program will consist of approximately 20 hours per week of classroom instruction and education meetings, and 20 hours per week of on-site supervised training. The petitioner stated that the trainee will be introduced to the petitioner's "organization structure and operations." The petitioner also described the responsibilities of the trainee throughout the training program as follows:

- Attends seminars, conferences, symposia, and industry briefings offered by private and government organizations on water filtration technologies for the purpose of gathering, organizing, processing, and learning from essential information on technology trends.
- Monitors, studies, and analyzes comparative water filtration technologies across the U.S. through the conduct of comprehensive primary and secondary product/market research.
- Monitors, learns, and trains on current technology deployment techniques in the industry and recommends a central technology distribution strategy for [the petitioner] including viable channel development alternatives for water filtration systems.
- Builds and maintains collaborative relationships with key sources of technology information including but not limited to government bodies, educational and research institutions, regulatory agencies, power and utilities sectors, and other reliable service organizations where high-value information can be obtained in support of a regimented training program.
- Studies and learns from the design, development, and use of an industry database that identifies with particularity the names, addresses, products, services, support organization, partners, affiliates, and distributors/vendors of global water filtration systems, and evaluates their potential technology importance to [the petitioner].
- Studies, identifies, and learns from the best principles and practices in the water filtration technology and dissects the impact of technological innovations / enhancements on industry growth and business profitability.
- Benchmarks [the petitioner] with key competitors and studies, researches, and documents the key factors for technology leadership in the water filtration business.

- As a training-related output measure, develops and completes a Water Filtration Technology Training Manual, a Customer Technology Training Kit, and a Technology Roadmap for [the petitioner] in a language and format that facilitate the build-up of new knowledge among master distributors and customers.

On January 16, 2008, the director sent a request for additional information. The petitioner requested further information about the training program offered by the petitioner.

The director requested information regarding the lack of availability of the training in the alien's home country. In response, the petitioner submitted a letter from [REDACTED], located in the Philippines.

The petitioner also explained that currently the petitioner does not have a position for the beneficiary abroad. Previous counsel for the petitioner stated that the "training program is for two years and within that time, steps will be taken to provide the alien beneficiary with skills and knowledge in which to expand the U.S. company abroad." Prior counsel further stated that the training program will provide "sufficient opportunity for the trainee to build up a close relationship with [the petitioner's] network of agents in promoting, and selling the products and services of the company. This is the reason the company puts in a heavy premium in sales training."

The petitioner submitted a document with the lesson plan for Week 1, showing the topics each trainer will cover during the training program. The petitioner also submitted a list of books and website references, and online training resources. In addition, the petitioner submitted the cover page of its sales training manual, and the table of contents. The manual appears to be over 71 pages but the petitioner did not submit the complete manual. The manual focuses on sales techniques.

On September 10, 2008, the director denied the petition on the ground that the petitioner has not established that the beneficiary will not engage in productive employment, and the training program deals in generalities with no fixed schedule, objectives, or means of evaluation.

Upon review, 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 failed to demonstrate that it has an established training program, and that the petitioner failed to submit evidence that the training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition where the petitioner submits a training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner has not established that its training program does not deal in generalities. Much of the information submitted by the petitioner is vague in nature and fails to describe what the

beneficiary would actually be doing on a day-to-day basis. The program is a two-year training program but the petitioner provided the lesson plan for Week 1, and only the cover page and table of contents of the sales training manual. It is not clear why the petitioner failed to submit the complete copy of the training manual, or a complete syllabus and outline of the two-year training program. 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)).

In addition, the initial support letter described the trainee's duties to include market research on water filtration systems, and an understanding of the technological process of water filtration. However, in response to the director's request for evidence, the petitioner provided a sales manual and stated that the training program will have a strong emphasis on sales. The petitioner stated that it is a distributor and wholesaler of water purification products, thus, it appears that the main focus of the petitioner is selling these products, rather than manufacturing them. 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). The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis.

Nor has the petitioner explained what the trainee will do during the on-the-job training. The training program will consist of 50% practical training, however, it is not clear what the trainee will be required to do during that time. 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 training program provides a general explanation of topics to be discussed but does not provide a syllabus that will be followed (outside of week 1), and does not provide information on how the list of resources provided will be utilized in order to learn the topics to be discussed. Again, 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. It has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found that the petitioner 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 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 field work at the mall kiosk which will consist of four days per week, for eight hours per day. Without additional information regarding what the beneficiary will actually be doing while he spends 50% of his training on on-the-job training, the petitioner has not overcome the conclusion that the trainee 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 which is incidental and necessary to the training. In addition, several of the trainee's responsibilities listed in the support letter appear to be productive employment such as "develops and completes a Water Filtration Technology Training Manual, a Customer Technology Training Kit, and a Technology Roadmap for [the petitioner] in a language and format that facilitate the build-up of new knowledge among master distributors and customers"; "monitors, studies, and analyzes comparative water filtration technologies across the U.S. through the conduct of comprehensive primary and secondary product/market research"; and, "monitors, learns, and trains on current technology deployment techniques in the industry and recommends a central technology distribution strategy for [the petitioner] including viable channel development alternatives for water filtration systems." 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).

Beyond the decision of the director, the petitioner has failed to adequately describe the career abroad for which the training will prepare the beneficiary. 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 response to the director's request for evidence, counsel for the petitioner explained that it does not have a position for the beneficiary abroad. The petitioner's former counsel stated that the "training program is for two years and within that time, steps will be taken to provide the alien beneficiary with skills and knowledge in which to expand the U.S. company abroad." He further stated that the training program will provide "sufficient opportunity for the trainee to build up a close relationship with [the petitioner's] network of agents in promoting, and selling the products and services of the company. This is the reason the company put in a heavy premium in sales training."

The petitioner has failed to establish that there is in fact a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. If the program focuses on the petitioner's unique methods of conducting business, then it is unclear how that training could be utilized by another employer. 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 in working for the petitioner. As the petitioner has not established an office in the Philippines, 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 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. 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).

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 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.