U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 08 117 52768 Office: VERMONT SERVICE CENTER Date: JAN 06 2010

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.

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 Rhew
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 "Peruvian style rotisserie chicken, barbeque and seafood restaurant" that seeks to employ the beneficiary as an assistant manager trainee for a period of eighteen 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 evidence (RFE); (3) the petitioner's response to the 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 the following grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; (2) the petitioner failed to demonstrate that it has an established training program and that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and, (3) the petitioner failed to establish that it possesses sufficiently trained manpower to provide the 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 a letter dated March 7, 2008, the petitioner explained that it is a company with the "purpose of purchasing existing franchise restaurants in Florida and Aruba." In September 2007, the petitioner purchased its first franchise restaurant from '[redacted]." The petitioner described the purpose of the training program as follows:

> The purpose of this training is to provide [the beneficiary] with a range of specific professional skills relating to the U.S. Restaurant industry so that he may serve as Assistant Manager of a franchise '[redacted]' restaurant in Aruba. Consequently, our company's Assistant Manager must fully and completely understand, and have a hold on the way the franchise Restaurant business is run in the U.S., but in particular how our restaurant works. Our objective is to continue purchasing existing franchises and expanding our business. We strongly believe that having well trained managers will help us attain that goal. The ultimate purpose of the training program is to train [the beneficiary] to qualify for placement in Aruba by Assisting in the management of a restaurant.

The petitioner also stated that the beneficiary will "at all times be coordinated and supervised" by the director of operations and the director of franchise development. The petitioner further stated that this type of training is not available in the Caribbean and Latin American countries, and it wishes to expand its operations to these areas.

The petitioner submitted a training outline that consists of the following phases: (1) Introduction (1.5 months); (2) Understanding [redacted] Concept and overview of the Training Program (3.5 months); (3) Food Quality Control (2.5 months); (4) Human Resources (2.5 months); (5) Marketing and Business Development (3 months); (6) Business Management (3 months); (7) Legal Administration in the U.S. (1 month); and, (8) Community Relations (1 month).

The training outline indicated that the program will consist of "direct instruction" for 4 hours and "supervised practical training" for 3.5 hours per day, five days a week.

The petitioner also submitted photographs of both its Miami and Aruba locations. In addition, it submitted the offer of employment letter to the beneficiary; the petitioner's articles of incorporation; a franchise agreement between the petitioner and [redacted] whereby the petitioner has the right to run a franchise located in Miami, Florida; the petitioner's payroll journal and income statements; the petitioner's 2007 Form 1120, U.S. Income Tax Return for an S Corporation; and the beneficiary's resume and employment verification letters.

On May 15, 2008, the director requested additional information about the training program. In a response letter, the Director of "[redacted]" stated that "due to the demand for qualified managerial individuals we have in place a well-organized program for alien trainees." The letter also stated that the training program utilizes two training manuals, one on restaurant management prepared by [redacted] and one called [redacted]. The petitioner re-submitted the same training outline but included copies of the two training manuals discussed above.

Although the director requested for a more detailed outline of the training program, and evidence as to why the training must occur in the United States rather than Aruba, the petitioner did not submit additional evidence responding to the director's concerns. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. 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.

Much of the information submitted by the petitioner is 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. The program is an eighteen month training program, but the petitioner's outline of the program consists of seven pages. In addition, each phase of the training program, which can last between from 1 month to 3 months, is explained in a few sentences. In addition, one month of the training consists of legal administration in the U.S. but the trainee will be placed in a position in Aruba and will not need to know U.S. law. Although the director requested a more detailed outline of the training program, the petitioner re-submitted the same outline. In response to the RFE, the petitioner provided two training manuals that the petitioner plans to utilize throughout the training program; however, the petitioner did not explain how the materials will be used with the training syllabus, or how the trainee will be tested and evaluated using these manuals. 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 how the different phases would be divided among the portions of the training program devoted to classroom training, written and oral presentation, and practical training. A breakdown of how the classroom training, written and oral presentation, and practical training components of the proposed training is not provided for any of the parts. 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. 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 establish that the proposed training is unavailable in Guatemala, the beneficiary's home country. 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 itself offers this training in the alien's home country. In other words, 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.

On appeal, counsel for the petitioner explains that as a purchaser of a franchise, the petitioner has a "contractual relationship with the franchisor to conduct the operations of the franchise, [redacted], within strict, proprietary regulations and guidelines." Thus, the trainee will be trained in the specific business operations of a franchise restaurant called [redacted]. Since this franchise is not located in Guatemala, the trainee could not receive the specific proprietary training provided by the petitioner. Thus, the AAO will withdraw this portion of the director's decision.

The director also found that the petitioner failed to demonstrate that it has sufficiently trained manpower to provide the training specified. 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. On the Form I-129, the petitioner stated that it employs 11 individuals and generated an income of $342,667.39 in three months of operation. The training outline stated that each day of the training program will consist of four hours of direct instruction and three and a half hours of supervised practical training for five days a week. All the training will be provided by the director of operations and the director of franchise development. However, in reviewing the petitioner's payroll list, the two trainers are not listed as employees of the petitioner. In addition, the petitioner did not explain how the director of operations and director of franchise development of a company that started operating a new franchise and is trying to expand operations can continue their day-to-day duties for eighteen months and also provide classroom training and on-the-job training to 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. at 165.

Beyond the decision of the director, the petitioner had failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad. 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. The petitioner stated that once the beneficiary completed the training program, the beneficiary will be employed as an assistant manager in a franchise located in Aruba. The petitioner did not provide evidence to demonstrate that there is a setting in which the beneficiary will be able to use his newfound knowledge. The beneficiary's newfound knowledge will be specific to the petitioner, and thus, an operation run by the petitioner would be the only setting in which he would be able to use the knowledge. 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 has the right to operate a La [redacted] franchise restaurant in Aruba. The petitioner submitted a franchise agreement between [redacted] and the petitioner which stated that the petitioner has the right of control of a franchise located in Miami, Florida. The agreement does not discuss right of control of a franchise in Aruba. The petitioner did not submit any documentation evidencing that the petitioner has control of a franchise in Aruba, and that the beneficiary will be employed as Assistant Manager in Aruba upon completion of the 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)). The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(*4*). Therefore, the petition may not be approved.

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition.

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).

On appeal, counsel for the petitioner noted that USCIS approved other petitions that had been previously filed on behalf of the petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding

precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.