

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



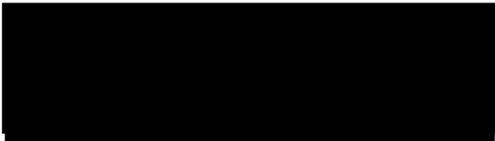
D5

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 engaged in printing, and it seeks to employ the beneficiary as a trainee in e-commerce online marketing management 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 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.

On November 28, 2008, the director denied the petition on two grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (2) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of 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 letter of support, dated February 12, 2008, the petitioner stated that it has “an in-house training program designed to provide trainees with expertise in different areas of manufacturing process and management,” and the “trainees will be trained on pertinent managerial techniques specific to our company.” In addition, the petitioner stated that the training program will “ensure that the practices and policies of our company are observed and implemented in our future branch in the Philippines.”

The petitioner also explained that the training is unavailable in the beneficiary’s home country for the following reasons:

Our company has a unique training program that addresses all aspects of our particular business. As previously mentioned, our company is the leading Printing Company west of California and we maintain sole proprietary rights over our methods and practices. No other company knows our means of sales tactics and marketing techniques; policies and methods better than we do.

During the program, [the beneficiary] will learn about our products, their nature and function, and our company’s different policies and strategies on management. Our program offers an intensive education on how we conduct business using proven and tested techniques and procedures.

The petitioner also submitted a training manual entitled, “Fundamentals of E-Commerce and Online Marketing.” The manual indicates that the classroom training “shall be for a period of 8 months.” The classroom training will be divided into 5 modules: Company Orientation; Perspective of the E-Commerce Industry; Introduction to E-Commerce; Web Service Mark Up Language; and, Internet Marketing. In addition, the trainee “shall be deployed in key operating units of the company.” The 40 hour week training will “consist of on-site instruction, observation and more importantly hands-on training.”

The manual also stated that the training program will be supervised by the human resources manager. The manual further stated that, “although, each session and/or program will be facilitated by an individual expert in that field, the trainee is required to report to the HR Manager at the end of each session.” The trainee will be evaluated throughout the program by oral and written examinations.

On June 11, 2008, the director requested for further evidence to establish eligibility for H-3 classification.

In a response letter, dated July 8, 2008, the petitioner explained that the training is not available in the alien’s home country for the following reasons:

Our company has an in-house training program designed to provide trainees with expertise in different areas of E-Commerce Online and marketing management with emphasis on Graphics. The trainees will be trained on pertinent managerial, design and sales techniques specific to our company and type of business. In addition, the trainees will also be educated and exposed to the different policies and standards of our company as part of their support training.

The trainee will be taught how to closely work with clients to provide full value for their patronization. At the end of the program, the trainee will have sufficient knowledge on the company's managerial strategies specifically designed and developed for our business and this therefore is unavailable in the Alien's home country.

The petitioner also explained that it has a branch office, [REDACTED] located in the Philippines. The petitioner further stated that the branch office in the Philippines "functions as the location where designs are created by Graphic Designers and Artists which is then digitally wired to [the petitioner]." In addition, the petitioner explained that the branch office in the Philippines is "fully staffed with highly trained professional designers/artist[s] and it is equipped with the most up to date design software and hardware."

Upon review, the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

As a preliminary matter, the AAO notes that the Form I-129 stated that the training program will last for 24 years. However, in the petitioner's support letter, response to the RFE, appeal brief and training manual, it indicates that the training program will last 18 months. Given that most of the documents submitted by the petitioner state that the training program will consist of 18 months, the analysis in this decision will be based on the described 18 month training program.

The director found that the petitioner failed to establish that the proposed training could not be obtained in the Philippines, the beneficiary's home country. 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 AAO notes that 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. 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 states that such training is not available in the Philippines because “an integral and necessary component of the successful implementation of the training program requires the full participation and overall supervision of the trainee by the Petitioner’s Human Resources Manager.” However, the petitioner did not explain why it is necessary to receive the training and supervision from the Human Resources Manager, and how training from the Human Resources Manager would differ from training received anywhere else. The petitioner did not provide any evidence of the necessity for the training to be provided by the Human Resources Manager.

The petitioner also stated that it has a branch office in the Philippines that is “fully staffed with highly trained professional designers/artist[s] and it is equipped with the most up to date design software and hardware.” The branch office in the Philippines works closely with the petitioner in order to fulfill customer orders. In addition, in the articles of incorporation for the branch office in the Philippines, it states that the primary purpose of the company is “to engage in the export business of creating, developing, executing and maintaining web designs, web marketing, including programming and data encoding and all acts connected therewith and incidental thereto.” Thus, it appears that the beneficiary can receive management training on E-commerce and online marketing at the branch office in the Philippines. Although counsel stated on appeal that working with the human resources manager in the United States is necessary for the proper training, the petitioner failed to provide any evidence to substantiate that claim. The petitioner also did not explain why the trainee cannot receive the training at its branch office in the Philippines since the branch office is engaged in the same type of business as the petitioner. 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 did not submit sufficient corroborating evidence to support the claim that the trainee cannot find training in image processing in the Philippines even if it is not the exact standard and process found in the United States.

The director found that the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

In the director’s decision, she noted that the beneficiary holds a Bachelor of Science in Computer Science and has worked as an assistant manager at Bank of the Philippines for seven months. As noted by counsel on appeal, the beneficiary received her Bachelor of Science in Computer Science in 1991, prior to the growth of E-commerce. Counsel also noted that the beneficiary’s professional experience working for the Bank of the Philippines did not include management of E-commerce and online marketing. The record does not indicate that the beneficiary has knowledge in E-commerce and online marketing as required by the petitioner. The AAO agrees with the petitioner and withdraws this part of the director’s decision.

Beyond the decision of the director, 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 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 that is divided into five modules. Although the petitioner submitted a training outline with materials and topics to be discussed in each module, much of the training is general to all business operations and not specific to the petitioner's business activities. In addition, it appears that half of the program will consist of classroom instruction and the other half will be supervised/practical training; however, the petitioner did not explain at all what the practical training will consist of for 50 percent of the training program. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis. 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 daily basis for much of the proposed training program. It has failed to establish that its proposed training program does not deal in generalities. Therefore, it has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

In addition, the petitioner did not provide a clear explanation of how the beneficiary will be evaluated throughout the training program. The petitioner stated that the beneficiary will take exams but it is not clear on what the beneficiary will be tested since the training program outline only provides a general explanation of topics to be discussed. The training program outline, for example, does not provide the syllabus that will be followed, information on how the material will be taught, information on the assignments that will be assigned to the beneficiary, or materials that the beneficiary will use in order to learn the topics to be discussed.

Beyond the decision of the director, the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified.

The form I-129 indicated that the petitioner currently employs 17 individuals. One of these employees is the petitioner's human resources manager who, according to the petitioner's letter of support, would supervise the beneficiary at all times. In response to the director's RFE, the petitioner also explained that the trainer of the program will be [REDACTED], the system administrator. However, it is not clear how the only system administrator of the company can take over the duties of trainer and system administrator for eighteen months. The record of proceeding, as currently constituted, does not adequately explain who will perform this individual's workload while he is instructing the beneficiary during this time, particularly during the 50% of the time that he will spend providing the beneficiary with classroom instruction. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) therefore precludes approval of this petition. For this additional reason, the petition may not be approved.

In addition, in response to the director's RFE, the petitioner submitted photographs of its store and the location where the training sessions will occur. The photographs of the petitioner's office indicate a reception area; a sales and customer service area; the CEO, marketing manager and sales manager's offices; prepress and folding machine areas; and large format and offset press areas. Thus, it is not clear where the training sessions will occur since the photographs do not indicate a training area. In addition, the rest of the store has all the equipment to perform the business operations, and it is not clear how the beneficiary will receive on-the-job training on this equipment when it is needed to finalize customer orders and run the business. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition. For this additional reason, 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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.

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.