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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D5

DATE: APR 05 2011 Office: CALIFORNIA SERVICE CENTER FILE: WAC 10 191 51571

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 \$630. 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 a dental laboratory that seeks to employ the beneficiary as a 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 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 proposed training will benefit the beneficiary in pursuing a career outside the United States. 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 the letter of support, dated July 6, 2010, the petitioner explained that it “manufactures a complete line of over 150 cosmetic and restorative formulations. The company services more than 86,000 dentists nationwide, and its products are available in more than 68 foreign countries.” The petitioner also stated that it has “consistently developed products that continue to help change the way dentists practice; products that allow the dentist to preserve, restore and enhance the teeth without the extensive cutting, drilling and tooth removal that have characterized dentistry in the past.” The petitioner also stated that it utilizes Computer Aided Design/Computer Assisted Manufacturing (CAD/CAM) that is “on the cutting edge of technology in the design of all restorative dental appliances in our product line.”

The petitioner explained that the training program is comprised of 5 separate modules and “each trainee will spend anywhere from one (1) to eight (8) months in each module.” The petitioner also stated that “for each twenty hours spent in class per week, the student will spend twenty hours performing practical work on live dental cases.” The petitioner further stated that the training program is “designed to educate the trainee on the methodology [the petitioner] uses to increase dental aesthetics and to help establish effective and reliable techniques for improving dental aesthetics, and the use of cutting edge innovation, in other countries.”

The five modules are: (1) [The petitioners’] Product Knowledge (approximately 6.5 months); (2) Model Impression Evaluation (approximately 4 weeks); (3) Fabrication Processes (approximately 8 months); (4) CAD/CAM Machinery Set-up and Operations (approximately 3.5 months); and, (5) CAD/CAM design software (approximately 6.5 months).

The petitioner submitted supporting documentation with the Form I-129 that included several manuals on topics that will be discussed during the training program. Since the petitioner did not present sufficient evidence in support of the petition, the director sent a request for additional evidence on July 13, 2010.

In a response letter, the petitioner explained why the training program is not available in the beneficiary’s home country as follows:

Serbia has dental technician high schools that offer basic dental technology education in full dentures, partial dentures and metal ceramic work using traditional dental technology tools and processes. These high schools do not offer a CAD/CAM training program for Snap-On Smile, Lumineers or any kind of zirconia restorations. Use of CAD/CAM to manufacture dental restorations produces higher quality restorations with less labor cost, business growth, and the knowledge of this technology provides the opportunity for Den-Mart to be competitive in the global market.

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

The director noted that the petitioner failed to establish that the proposed training could not be obtained in Serbia, the beneficiaries' 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.

In response to the director's request for evidence, the petitioner stated that Serbia has dental technician high schools but "these high schools do not offer a CAD/CAM training program for Snap-On Smile, Lumineers or any kind of zirconia restorations." On appeal, counsel stated that "Serbia is still recovering from the recent breakup of Yugoslavia and deadly war," and the "country was left divided and impoverished." Counsel further states, "with such economic malaise as a setting, it is not surprising that technologically-advanced computer aided design and manufacturing equipment at issue here is not even available in the country of Serbia, much less training programs to support the technology."

On appeal, the petitioner submits a letter from [REDACTED]. In that letter, the author states "although CAD/CAM is not a new technology, it has been slow to come to full adoption within the dental profession in Europe and even the USA and Canada with less than 8% market penetration within dental offices." The author also states that there are "approximately 25,000 dental office (doctor) users worldwide with more than 15,000 in the US and Canada alone," and he only knows of one doctor that uses this technology in Serbia. Thus, "the scarcity of the technology makes training opportunities completely void."

The petitioner submits a second letter on appeal by a practicing dentist in Serbia for over 22 years. The author states, "I can say with confidence that the computer design and computer aided manufacturing processes and techniques which as now becoming popular in Western Europe and the U.S., are not yet commonly found here." The author also states, "I am certain there does not exist any formal training program using such technology [in Serbia]."

The petitioner also submits information about Serbia from The World Factbook in 2010 that states, "reforms needed to ensure the country's long-term viability have largely stalled since the onset of the global financial crisis. Serbia is grappling with fallout from crisis, which has led to a sharp drop in exports to Western Europe and a decline in manufacturing output."

In reviewing the letters and supporting documentation of the current economic situation in Serbia, an adequate factual foundation to support the authors opinions was established. In addition, the petitioner stated that the training program will teach the beneficiary the petitioner's specific methodologies and techniques. The petitioner submitted sufficient evidence to corroborate its claim that the training program is not available in Serbia. The petitioner has also established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies in Serbia. The AAO will withdraw this portion of the director's decision.

The director also noted that the petitioner did not demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States pursuant to the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

As noted by the petitioner, the reason for creation of the training program is to train the beneficiary on the petitioner's own business practices and to train the beneficiary in the advanced dental technological procedures such as CAD/CAM. 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 will be specific to the petitioner, an operation run by the petitioner would be the only setting in which the beneficiary would be able to use the knowledge.

On appeal, the beneficiary states that he wishes to work as a dental technologist in Serbia and he wanted to train with CAD/CAM technology in the United States for a long time. The beneficiary also states that "as the computer-aided equipment becomes available in Serbia, we will be among the first in our town to use the devices." In addition, the petitioner stated on the Form I-129 that it does not plan to hire the beneficiary abroad upon completion of the training program. As noted above, the petitioner submitted sufficient evidence to establish that this type of training is not available in Serbia. The petitioner submits several letters from experts in the dental industry stating that the technology taught in the training program is not yet widely available in Serbia. Thus, the petitioner has not shown that the training will benefit the beneficiary in pursuing a career outside the United States as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

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.

Much of the information submitted by the petitioner is vague in nature and does not clarify what the beneficiary would actually be doing on a day-to-day basis. The program is a two-year training program that is divided into five phases that are explained in a few sentences. The petitioner also provided a short lesson plan for each phase that again, is very vague in detail and does not explain what the beneficiary will be doing in detail for months at a 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. 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).

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 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.