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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

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

FEB 15 2011

IN RE: Petitioner:  
Beneficiaries:



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 gymnastics training facility that seeks to employ the beneficiary as a gymnast 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 three grounds: (1) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. (2) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; and, (3) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country. 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 March 18, 2010, counsel for the petitioner explained that the petitioner is a center that provides gymnastics training. Counsel further stated that the petitioner “employs coaches of the highest international caliber and trains athletes in preparation for national and international competitions, including Olympic Trials and Olympic Games.” Counsel also explained that the beneficiary is “already a renowned gymnast in her home country, Peru, where she competed as a member of the Peruvian National Gymnastics Team from 2000 through 2009.” In addition, counsel stated that the beneficiary has “outgrown the available training resources in her home country,” and stated that the “gymnastics training available anywhere in Peru is not at the same advanced level available in the United States.”

On the Form I-129, the petitioner explained the reason for providing the training to the beneficiary as follows:

[The petitioner] is [REDACTED] already recognized in the U.S. as a leader in gymnastics training. If we train a gymnast from Peru and she makes it into a World Championship or an Olympic Games and then wins a medal for the 1<sup>st</sup> time in history, it will ensure that the prestige of our organization will be well known all around the world. We feel [the beneficiary] is a gymnast with great talent and the potential to qualify for the London 2012 Olympics if she receives proper training at an elite level, training unavailable to her in Peru. The prestige we would gain by having trained an Olympic athlete would immeasurably aid our organization in the international gymnastics arena, and as such would provide us a greater return on our training investment than any training fees could match. For these reasons, we are willing and eager to train [the beneficiary] at no charge.

The petitioner submitted a training schedule in which the beneficiary will train and attend school for 36 hours a week. Her gymnastic training will consist of the following: warm up and conditioning; uneven bars; vault; balance beam; floor; specific conditioning; and, balance beam and trampoline.

In the letter, dated March 15, 2010, the petitioner stated that the National Federation of Peru asked the petitioner to prepare the beneficiary for the 2012 Olympic Games, and stated that “Peru never reached the first level in international competitions such as World Championships or Olympic Games,” and “instead, for the last 10 years the majority of these competitions have been won by the United States.” The petitioner submitted a letter from the president [REDACTED] that stated that “in our country we don’t have the

proper equipment, experience and cutting-edge teaching techniques and high performance conditions that can guarantee a possible qualification in the Olympics in London 2012.”

On March 30, 2010, the director sent a request for further evidence of the training program. In response to the director’s request for additional evidence that shows the proposed training is not available in the alien’s country, the petitioner submitted scores for the United States and Peru from the Women’s Team All-Around Finals at the November 2009 Junior Pan-American Championships where the U.S. placed first and Peru placed 8<sup>th</sup>. The petitioner also submitted a letter from the United States Gymnastics Federation, dated April 12, 2010, that stated the following regarding the need to train in the United States:

As this moment, [the petitioner] is able to offer a significantly greater coaching expertise as compared to the level of expertise possessed by the actual coaches residing in Peru. [Thee petitioner’s] elite coaches and athletes travel to our National Team Training Center every month to train with the National Staff and our National Coordinator [REDACTED]. These periodic camps allow [the petitioner’s] coaches to keep updated with all the latest information and techniques, giving them access to every possible tool for developing a Pan-American and Olympic level gymnast. In contrast, the level of coaching expertise available in Peru is not sufficient to provide training at a comparable level. Indeed, Peru has never had a winning gymnast at the Pan-American games or the Olympic Games, whereas gymnasts trained in the United States have continuously won countless international competitions, including both the Pan-American games and the Olympic Games.

On appeal, the petitioner submits several support letters asserting that the beneficiary will receive a higher level of training in the United States than in Peru.

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 failed to establish that the proposed 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 that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner submitted a schedule of the training program consisting of training and schooling. The schedule explained the hours and days for each section of the training. The petitioner also submitted an explanation for all of the gymnastics training and a DVD of an example of the training. In addition, the petitioner submitted information on how the beneficiary will be evaluated during the training program. The petitioner provided sufficient evidence to establish that it has a training program with a fixed schedule, objectives and means of evaluation. The AAO will withdraw this portion of the director’s decision.

The director also found that the beneficiary already possesses substantial training and expertise in the proposed field of training. The AAO disagrees. 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.

The petitioner submitted the beneficiary's resume that indicated she has been training as a gymnast since she was three years old. The beneficiary has participated in several championships for gymnastics and has achieved numerous medals for her participation in the championships. However, the petitioner explained that the training program is to prepare the beneficiary to qualify for the Olympics. The beneficiary has never qualified for the Olympics and although she has substantial expertise in the field of gymnastics, she is still training in order to reach an Olympic level which is much higher than what she has already reached. Thus, the beneficiary will train for a competition that she has not been able to achieve yet and thus, the petitioner satisfied the regulation at regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) and the AAO will withdraw this position of the decision.

The director also noted that the petitioner failed to establish that the proposed training could not be obtained in Peru, 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 would be provided by the petitioner or another entity.

As noted above, the petitioner stated that the training is not available in Peru because it "does not provide the same elite level competitive environment as the United States." The petitioner explained that the United States ranked higher in gymnastics than Peru and thus, the training provided in the United States will be of a higher caliber than the training received in Peru.

Although the United States has ranked higher than Peru in gymnastics competitions, it does not mean that training in competitive gymnastics is not available in Peru. In fact, as noted by the beneficiary's resume, she is a member of the National Team, the Peruvian Federation of Gymnastics, and has participated in several national and international competitions and has competed with the United States as well. Thus, the petitioner has not provided sufficient evidence to establish that Peru does not have training in competitive gymnastics. Although counsel argues that the level of training is higher in the United States, the regulations do not require evidence to establish that training will be better in the United States than in the alien's home country, but instead require that the petitioner establish that the training is not available at

all in Peru. The petitioner was not able to satisfy this criteria and the petitioner was properly denied.

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.