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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

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: [redacted] Date: JAN 21 2011

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 private club that seeks to employ the beneficiaries as Golf and Country Club Management trainees for a period of eight months. The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker trainees 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.[1] 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 beneficiaries' home country; and, (2) the petitioner had failed to demonstrate that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in 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

[1] The record also contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which appears to have been filed by an entity not entitled to represent others in proceedings before USCIS.

(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 September 29, 2009, the petitioner explained the goals of the training program as follows:

> To this effect, the training for the Beneficiaries has been designed to achieve two important goals. In addition to the primary objective of learning about all facets of club and golf management (which the rotation through various departments will accomplish) for the benefit of furthering their career goals in their home country, the training also aims to educate the Beneficiaries in the culture of our organization. Thus, upon completion of the Program and return to their home country, aside from pursuing a career in the hospitality management field, the Beneficiaries can also act as a cultural liaison between [redacted] employees to be hired for the coming seasons. As a liaison, the Beneficiaries will help the foreign employees prepare for entering the culture in America and that of the Club before their arrival here.

The petitioner also explained that the training program is not available in the beneficiaries' home country of [redacted] due to the following reasons:

> The Program that the Club offers is not readily available in the Beneficiaries' home country of [redacted] because there are very few country clubs in [redacted] and none that adhere to the level of service, training and professional development as is offered by the Club. No country club in [redacted] has the resources or the facilities to provide a training program like the one that is offered by the Club therefore the only option for [the beneficiaries] is to become Beneficiaries of our Program.

On [redacted], the director sent a request for additional evidence regarding the petitioner's training program.

The petitioner submitted a training outline with the following department rotations: Orientation (week 1); Quality of Service (week 2); Customer Service General Knowledge (week 3); Customer Service Technical Skills (week 4); Golf Management (weeks 5-7); Turf Management (weeks 8-9); Membership Department (weeks 10-11); Administrative Department (weeks 12-13); Accounting Department (weeks 14-15); Human Resources (weeks 16-17); Communication and Public Relations (weeks 18-19); Sales and Special Events (weeks 20-21); Basics of Management Training (weeks 22-24); Supervisory Training (weeks 25-27); Mid-Management Training (weeks 28-30); Executive Management Training (weeks 31-33); Evaluation (week 34); and Exit Interviews (week 35). The petitioner also listed the time devoted to classroom training and on-the-job training for each department rotation.

The petitioner also submitted further evidence as to why the training program is not available in [redacted] For example, the petitioner submitted documentation indicating that golfing is fairly new in [redacted] and that [redacted] has only three golf clubs, which are much smaller than the facilities provided by the petitioner.

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 could not be obtained in [redacted] 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 aliens' home country and why it is necessary for the aliens 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 aliens' home country. In other words, whether the petitioner itself offers similar training in the beneficiaries' home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiaries' home country, irrespective of whether it would be provided by the petitioner or another entity.

As noted above, the petitioner stated that the training is not available in [redacted] because "there are very few country clubs in [redacted] and none that adhere to the level of service, training and professional development as is offered by the Club. No country club in [redacted] has the resources or the facilities to provide a training program like the one that is offered by the Club therefore the only option for [the beneficiaries] is to become Beneficiaries of our Program." On appeal, the petitioner states that it is the only private club in the world to be honored with a Six [redacted] presented by the [redacted] The petitioner also states that "none of the clubs in existence in [redacted] have a full scale and inclusive operation like [the petitioner] does and therefore are unable to offer a comprehensive training and development program."

In the present case, however, the entire reason for creation of the training program is to train the beneficiaries' on the petitioner's own business practices. Moreover, the petitioner in this particular case has submitted evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another facility. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in Romania, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(*1*) and 214.2(h)(7)(ii)(B)(*5*).

However, the petition as presently constituted may not be approved. 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. As noted previously, the AAO has found the petitioner in compliance with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(*1*) and

214.2(h)(7)(ii)(B)(*5*). As noted by the AAO, however, in the present case, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.

Having made such a demonstration, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiaries' will be able to use their 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 beneficiaries' would be able to use the knowledge.

The petitioner asserted that the training program "has been designed for the primary objective of teaching and exposing the Beneficiaries to all facets of club and golf management (which the rotation through various departments will accomplish) for the benefit of furthering the Beneficiaries' career goals in their home country of [redacted]. Thus, it does not appear that the beneficiaries' will be working at a branch operation of the petitioner in [redacted]. Instead, the training program will assist the beneficiaries' in finding employment with a golf club. In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiaries can utilize their skills would be for the petitioner in [redacted], petitioner must document that it actually has plans to commence operations in [redacted]. 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 to demonstrate that it is in the process of setting up operations in [redacted]. 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 also contends that upon completion of the training program, the beneficiaries will act as Cultural ambassadors and liaisons to further European temporary international staff. However, the petitioner did not provide an employment offer for this position or any documentation to evidence that the beneficiaries will in fact be employed by the petitioner in Romania. The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(*4*). Therefore, the petition may not be approved.

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(F), the petitioner's proposed training program is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. The petitioner stated that the beneficiaries will return to Romania and assist the petitioner in finding H-2B workers for the petitioner. Therefore, the AAO concurs with that portion of the director's decision. 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.