U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 10 2011 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

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:
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 runs "summer camps, sports training and year round personal enrichment programs," and it seeks to employ the beneficiary as a trainee for the sport club manager training program for a period of 12 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.

The director denied the petition on multiple 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 proposed training is unavailable in the beneficiary's home country; (3) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training, (4) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; and, (5) 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

(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, the petitioner explained that it operated summer camps and programs and "owns two sporting facilities which offer year round professional tennis to members and public, in the form of individual and group lessons, leagues, events, holiday camps, junior clinics, township and school programs." The petitioner further stated that the beneficiary "will have the opportunity to be exposed to multi-faceted facilities and a wide range of business opportunities that will contribute to preparing the trainee to be a business and recreation manager." In addition, the petitioner stated that 20 percent of the training will consist of training on systems and processes and the rest of the program will consist of "hands-on, on-the-job training type format."

The petitioner stated that this training is not available in the beneficiary's home country of Bulgaria because "although Bulgaria has produced some exceptional tennis players over the years, this has been in spite of an infrastructure at grass root and club levels." The petitioner also stated that the infrastructure in Bulgaria "cannot be compared to the processes that are already in place in the United States" because the U.S. "has for many years been seen as the industry leader in most areas." In discussing Bulgaria, the petitioner stated that "most operations tend to be small one-person operations and lack any business management practices."

In regards to how this training program will differ from the training the beneficiary has received in the past, the petitioner stated the following:

> [The beneficiary] gained most of his experience teaching and running clubs in South Africa and this can in no way compare to a facility that found [sic] in the snow climates. There are no indoor facilities and most operators are one or two man operations. Now living in Bulgaria, the industry is completely different. The Northern Hemisphere countries have a unique challenge in many cases, especially those that have long cold winter months and as a result require a large part of their year to be indoors as in our case. Bulgaria is exactly the same. Limited resources and strategic management of facilities in areas such as this are key. [The beneficiary] would gain an immense amount of knowledge, experience, training and benefit, as would his community and the greater game of tennis. This is our mission.

The petitioner submitted a two-year training program outline. On the Form I-129, the petitioner explained that the training program is for two years and the beneficiary completed the first year of training, and the current petition is to extend the beneficiary's H-3 status to complete the petitioner's two-year training program. The beneficiary will work on the following issues in the second year of the training: finances (4 months); human resources (3 months); staff training (1 month); program development (5 months); and evaluation.

On April 6, 2010, the director requested further evidence documenting eligibility for the H-3 nonimmigrant visa. In a response letter, the petitioner further explained why the training is not available in Bulgaria as follows:

> The current situation in the tennis community is that most tennis professionals teach independently and are one-person businesses. Training from this community is therefore limited when looking at a facility that has a number of tennis courts and that offers employment opportunities for additional tennis professionals and even administrative staff. School programs, township programs, club program[s] for the most part do not exist and the ones that do are primitive at best. Training will not only allow the trainee to pursue the opportunity of establishing a facility as mentioned, but will also give hi[m] the opportunity to become involved in the Tennis Administrators on a national level.

The petitioner also resubmitted virtually the same information it presented with the initial petition. The petitioner did not provide additional information about the beneficiary and whether he will be performing productive employment, as requested by the director. 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).

On appeal, the petitioner submits several documents that are "examples of forms we use to cover different areas," as teaching tools.

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 demonstrate that it has an established training program, and that 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. The training outline 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 a 24-month training program but the petitioner's outline of the program consists of eight pages. The

program is broken down into eight phases and the petitioner provides one paragraph to explain each phase. For example, the program development section of the training will last for 5 months and the explanation of what the beneficiary will be doing is only one paragraph. In addition, the petitioner stated that the training program will consist of 20 percent of classroom instruction; however, the petitioner only provides a general explanation of topics to be discussed but does not provide the syllabus that will be followed, information on how the materials will be taught, or information on the reading assignments that will be assigned to the beneficiary. On appeal, the petitioner stated that the beneficiary will be trained in software packages such as Dartfish, QuickBooks, JKCP Scheduler, Office Tracker, Microsoft Office products, [redacted] and Campminder but it is not clear if these software packages are utilized in Bulgaria and if this training will assist the beneficiary when he returns home. The petitioner also submits on appeal "examples of forms we use to cover different areas." In reviewing the documents, several documents are very basic information or checklists for the petitioner's employees on running certain areas of the company such as the pro-shop or the human resources department. The petitioner also presented some general articles and presentations on branding and marketing. It is not clear how these documents will be sufficient material for training the beneficiary for two years. 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)).

In addition, the director requested further information of the training program and the petitioner continued to submit the same training outline as initially submitted. 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).

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 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 noted that the petitioner failed to establish that the proposed training could not be obtained in Bulgaria, 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.

As noted above, the petitioner stated that the beneficiary "will have the opportunity to be exposed to multi-faceted facilities and a wide range of business opportunities that will contribute to preparing the trainee to be a business and recreation manager." The petitioner further stated that the training is not available in the beneficiary's home country of Bulgaria because "although Bulgaria has produced some exceptional tennis players over the years, this has been in spite of an infrastructure at grass root and club levels." Moreover, the petitioner stated that Bulgaria requires tennis facilities that are indoors due to the cold weather, and thus, the management of an indoor facility is different. However, the petitioner did not submit any documentation to support this claim. The petitioner did not present evidence that Bulgaria does not have any tennis facilities like the petitioner's facility. The petitioner also noted that Bulgaria has produced exceptional tennis players and it is not clear how such players are developed in this country if the tennis facilities are inadequate. In addition, most of the training program consists of training in marketing, human resources, and customer service that are similar to any company and does not appear to be unique to the petitioner. The petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies. The petitioner has failed to demonstrate that the proposed training could not be obtained in the beneficiary's home country. It has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(*1*) or 214.2(h)(7)(ii)(B)(*5*).

The director also found that the petitioner failed to demonstrate that 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*2*) requires a demonstration that 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*3*) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The petitioner submitted the training program outline and stated that the beneficiary will receive 20 percent classroom instruction and 80 percent of hand-on training each day for 24 months. As noted above, the petitioner submitted a vague description of the 24-month training program and it is not clear what the beneficiary will actually do for his hands-on training. Thus, with a vague description of the day-to-day activities performed by the beneficiary, the petitioner did not provide sufficient evidence to overcome the director's concern that the training program will result in productive employment beyond that which is incidental and necessary to the training. In addition, the beneficiary's resume stated that he "worked as Group Leader in Tennis Summer Camp 2009 and [is] currently one of tennis [redacted] School of Tennis Centres." The beneficiary also stated in his resume that his work experience with the petitioner

"also involved running the front desk which involves dealing with clients needs and court bookings, administration, [redacted] restringing, etc." Thus, according to the beneficiary, he was performing productive employment with the petitioner for the 12 months he was in H-3 status. The petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(*2*), 214.2(h)(7)(ii)(A)(*3*), or 214.2(h)(7)(iii)(E).

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.

The petitioner submitted the beneficiary's resume which indicated that in January 2003, he "was approached by [redacted]lub to buy over an existing business," which the beneficiary took over and '[redacted] In addition, in March 1999, the beneficiary opened the B&S Tennis School. The beneficiary's work experience also included working as an assistant coach for [redacted] School of Tennis and coached with the [redacted]and the German School. Furthermore, the beneficiary was employed by the petitioner for approximately 12 months in H-3 status.

According to the training outline, the beneficiary "will have the opportunity to be exposed to multi-faceted facilities and a wide range of business opportunities that will contribute to preparing the trainee to be a business and recreation manager." However, it appears that the beneficiary has extensive educational and professional experience with management in the tennis industry. The petitioner claims that his professional experience in South Africa differs from the experience required in Bulgaria since the facilities in Bulgaria are closed facilities due to the cold weather. However, the petitioner did not present any evidence to establish that the tennis facilities in Bulgaria differ from tennis facilities in South Africa. Furthermore, the petitioner has not provided sufficient evidence to establish that the training it will provide differs from the expertise the beneficiary received by both his academic and professional background. 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 evidence submitted is not sufficient to establish that the beneficiary does not already have substantial knowledge of this industry and that he requires further training.

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 director noted that the petitioner filed an H-1B petition on behalf of the beneficiary for employment of three years. The director also noted that a previous trainee in H-3 status is currently working with the petitioner in H-1B status.

On appeal, the petitioner did not discuss the director's concerns and did not overcome the director's findings. As noted above, the beneficiary also indicated on his resume that he is performing productive employment with the petitioner in H-3 status. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.