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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

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DATE: **MAY 13 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiaries: [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 hotel that seeks to employ the beneficiary as a hotel management trainee 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.

The director denied the petition on the ground that the petitioner failed to demonstrate that the proposed training is unavailable in the Philippines, 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 its letter of support, dated September 29, 2010, the petitioner stated that it established the [REDACTED] that "aims at preparing the trainees for their future careers in Hotel Management." The training program is divided into seven sections:

[REDACTED]
Property Maintenance and Housekeeping Management, Accounting and Administration, and Hotel Management: Starting an Overseas Property." The petitioner also stated that the training program is not available in the beneficiary's home country for the following reason:

Our training program is not available in [the beneficiary's] home country. Our training program is specifically designed for boutique hotels and is based on US standards for quality and service. [REDACTED] do not exist in [the beneficiary's] home country – the Philippines. Foreign travelers would have to go to five star hotels for their stay in the Philippines. Although there is a substantial number of motels and inns in the Metropolitan areas, they are not frequented by foreign travelers and are mainly used by locals for purposes other than overnight lodging.

With the increasing number of foreign travelers to the Philippines and the success of boutique hotels in the United States, there is an emerging market for the establishment of boutique hotels in the Philippines to give foreign travelers lodging alternatives in the country. The training program to be undertaken by the trainee will enable the participant beneficiary to assess and explore applicable principles in hotel operations and management and learn how such principles result in efficient implementation and operation of a boutique hotel. At all times during the training program, the trainee is under the direct and immediate supervision of the Field Supervisor who will be responsible for supervising the trainee's participation within the specified areas. Because the training involves observation of the hotel operations and management, the training does not displace any US worker. The trainee's level of knowledge and experience would not permit her active participation to work with our team.

The petitioner also stated that the beneficiary's role during the training program "shall be limited to on-site observation, orientation and continued observation," and the "nature of the program consists of both instructional studies and one on one coaching." The petitioner also submitted a training program outline which stated that the trainee will have 52 weeks, 8 hours per day of formal classroom instruction, and will also have 20 weeks of practical observation and one on one coaching.

On November 2, 2010, the director sent a request for additional information regarding the specifics of the training program, the availability of this type of training in the beneficiary's home country, evidence that the training will help the beneficiary obtain a career abroad, and evidence pertaining to the petitioner.

In response, the petitioner submitted evidence to establish that the training program provided by the petitioner is not available in the Philippines. Specifically, the petitioner submitted excerpts of [REDACTED] and [REDACTED]

The petitioner also submitted a paper entitled, [REDACTED] prepared by [REDACTED] and [REDACTED]. The [REDACTED]. In addition, the petitioner submitted an excerpt from a Policy Advisory entitled, [REDACTED]. Finally, the petitioner submitted an affidavit from [REDACTED]

[REDACTED] The petitioner also reiterated that the Philippines does not have many boutique hotels, thus, the training program on boutique hotel operations is not available in the Philippines. The petitioner also stated that "most of the training materials are not available in the Philippines," and the beneficiary will be trained in the "use of certain softwares such as [REDACTED] and [REDACTED] system that we used in our company."

On appeal, counsel for the petitioner submits a brief that further discusses the evidence previously submitted. Counsel argues that it is sufficient evidence to establish that this type of training is not available in the Philippines.

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 classification sought.

The issue is whether the petitioner has met its burden of proof in establishing that it has complied with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). 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 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. 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 evidence that the training program is not available in the Philippines, the petitioner submitted excerpts from a paper entitled, [REDACTED] in the Philippines," by [REDACTED] and [REDACTED] written in 2001. The [REDACTED]

petitioner quoted a section of the paper as evidence of the lack of management training in the field of hotel management and operations in the Philippines. However, in reviewing the article, it does not appear to provide evidence that training on hotel and restaurant management does not exist in the Philippines. The article stated, "as tourism serves as the main market for hotel and restaurant services, increase in visitor traffic over the past ten years resulted in a corresponding boom in the hotel and restaurant industry." The article also has a section entitled, [REDACTED] and under that section the authors stated that "this hotel and restaurant boom paved the way for different schools to give courses in Hotel and Restaurant Management." The article lists [REDACTED] and several universities in the Philippines that provide courses in Hotel and Restaurant Management. Furthermore, the authors state that "Besides the formal training potential hotel and restaurant workers and professionals receive from the academe, hotel establishments conduct on-the-job training, apprenticeship, management training, and career development seminars." Thus, in reviewing these sections of the article submitted by the petitioner, it does not appear to state that the type of training offered to the beneficiary is not available in the Philippines. Instead, the article is stating how hotel and restaurant management has boomed in the Philippines which led to more training in hotel and restaurant management from universities and institutions. Thus, this evidence clearly does not establish that the training offered by the petitioner is not available in the Philippines.

The petitioner also submitted excerpts from an article entitled [REDACTED] for the Philippines." The petitioner stated that the article indicated that the hotel and restaurant industry needs more training on sustainable tourism and thus, this is evidence that the training offered by the petitioner is not offered in the Philippines. However, sustainable tourism is a new approach to make tourism environmentally sensitive and economically viable, and in reviewing the petitioner's training outline, it does not offer training in sustainable tourism. Thus, this article is not relevant to the petitioner's training program. 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).

In addition, the petitioner submitted an excerpt from a Policy Advisory from the Congressional Planning and Budget Department of the House of Representatives, entitled, [REDACTED] " The petitioner quoted to a section of the article that stated "there is [a] scarcity of tourism graduates who are capable of assuming management positions and with strong orientation to research for product development and improvement." In review of this quote, the article is quoting another person, [REDACTED] in 2003. This quote from the article does not provide evidence that there is no training program in the Philippines like the program offered by the petitioner. Instead, it is stating that students that graduate in tourism may not be able to fill management positions as soon as they graduate. Thus, the information is not sufficient to show that hotel management training is not available in the Philippines. In fact, the article recommends a "national network of tourism education and training institutes to strengthen cooperation and build up research capability of students and industry practitioners." Thus, the Philippines puts an emphasis on training programs that offer practical experience.

Finally, the petitioner submitted an affidavit from [REDACTED] the Group Marketing Communication Officer for the [REDACTED] located in the Philippines. [REDACTED] stated, "since part of my duties is to hire staff in my department, I am fully aware of the current training programs and educational courses that are available in our country in the field of hotel management." The author stated that it reviewed the petitioner's training program and concluded that the petitioner's program is not available in the Philippines because the petitioner's program is "specific to a boutique hotel which is not offered by school here in the Philippines or in TESDA." In reviewing the letter, an adequate factual foundation to support this opinion has not been established. The author does not indicate whether he reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor does he describe the training program in any meaningful fashion. The extent of his knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his pronouncements and this evidence is therefore not probative of any of the criteria at issue here. Nor has the author submitted any industry data or other information to support his opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Furthermore, the petitioner claimed on several occasions that the training program will teach the beneficiary hotel operations of a boutique hotel which is not available in the Philippines because it does not currently have boutique hotels. However, in reviewing the training outline, at no time does it specify training that is specific to a boutique hotel. Instead, the training outline discusses general hotel management issues that are relevant to any hotel, and the outline is not specific to a boutique hotel. The petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies in the Philippines. 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 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.