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SEP 23 2009

FILE: WAC 08 012 51814 Office: CALIFORNIA SERVICE CENTER Date:

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)

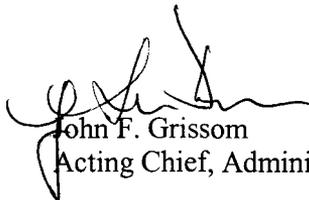
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified her decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a real estate service and investment firm that seeks to employ the beneficiary as a trainee for a period of twenty-four 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 petitioner filed the instant petition on October 15, 2007. The director denied the petition on January 6, 2008, on the basis of her determination that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. The petitioner appealed the director's decision to the AAO. In its November 17, 2008 decision, the AAO withdrew the director's finding that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, but found the petition unapprovable for four reasons: (1) that the petitioner had failed to establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States; (2) that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program; (3) that the petitioner had failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (4) that the petitioner had failed to establish that it has sufficiently trained manpower to provide the training. As the director did not address these issues in her January 6, 2008 decision, the AAO remanded the petition for consideration of these issues.

The director issued a request for additional evidence on January 16, 2009, and afforded the petitioner the opportunity to address the issues raised by the AAO in its November 17, 2008 decision. Counsel responded to the director's request on February 27, 2009, and submitted additional evidence. The director denied the petition on July 16, 2009, and certified her decision to the AAO for review. In her decision, the director found, as did the AAO in its earlier decision, that the petitioner had failed to establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States; that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program; that the petitioner had failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and that the petitioner had failed to establish that it has sufficiently trained manpower to provide the training. Counsel and the petitioner have elected not to submit additional evidence in rebuttal to the director's July 16, 2009 decision. Accordingly, the AAO deems the record complete and ready for adjudication.

As indicated, the same issues before the AAO when it issued its last decision are now again before the AAO. As the AAO found the evidence of record insufficient to establish the petitioner's eligibility in its November 17, 2008 decision, on certification the AAO will only consider the evidence submitted by the petitioner after its issuance of that decision. The

following evidence has been submitted into the record since the AAO's November 17, 2008 decision:

- A document entitled "Fundamentals of Facilities Management, Planning and Project Management with Focus on Commercial Property"
- The resumes of [REDACTED] and [REDACTED] who are to be trainers; and
- A March 18, 2008 letter from [REDACTED] marketing head and lifestyle property planner at Amelia Realty, in the Philippines, requesting a meeting with the beneficiary upon her return to the Philippines.

None of these documents satisfy 8 C.F.R. § 214.2(h)(7)(2)(A)(4), which requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States. In its November 17, 2008 decision, the AAO 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). Again, the question to be addressed when attempting to satisfy those two criteria 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.

However, in this 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 beneficiary will be able to use her newfound knowledge. Since her newfound knowledge (the knowledge that cannot be obtained in the Philippines) will be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge. Although the petitioner has asserted that the beneficiary will utilize her skills at its "future affiliate branch" in the Philippines, this document contains no information about that branch.

Since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training.

The document entitled "Fundamentals of Facilities Management, Planning and Project Management with Focus on Commercial Property" fails to address this issue. Nor do the resumes of [REDACTED] and [REDACTED] who are to be trainers.

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<sup>1</sup> Although the record of proceeding as it existed at the time the AAO issue its November 17, 2008 decision contained a copy of [REDACTED] resume, the AAO notes that this version is more detailed.

In his March 18, 2008 letter to the beneficiary, [REDACTED] marketing head and lifestyle property planner at Amelia Realty, in the Philippines, requests a meeting with the beneficiary upon her return to the Philippines, and states that he finds that the “training and competencies” she would gain during the proposed training program would be “of good value to the organization.” However, [REDACTED] letter does not satisfy 8 C.F.R. § 214.2(h)(7)(2)(A)(4). The petitioner has previously emphasized that its proposed training program is specific to the petitioner. Since her newfound knowledge (the knowledge that cannot be obtained in the Philippines) will be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge. If the training would prepare the beneficiary for a career with [REDACTED]’s organization, then it is unclear how the training is in fact specific to the petitioner. Moreover, the petitioner asserted previously that the beneficiary will utilize her skills at its “future affiliate branch” in the Philippines. The AAO noted this assertion by the petitioner in its previous decision, but the petitioner has elected not to address the matter of its “future affiliate branch.”

The AAO, therefore, concurs with the director’s determination that the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(2)(A)(4), which requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

Nor do any of the petitioner’s submissions satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1), which requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program, or 8 C.F.R. § 214.2(h)(7)(iii)(A), which precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation. As noted by the AAO in its November 17, 2008 decision, the information contained in the record of proceeding at that time was extremely vague, and left the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis.

In its November 17, 2008 decision, the AAO placed the petitioner on notice that the record failed to offer 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. The AAO noted that although the petitioner had submitted a 127-page training manual, it did not connect the reading materials contained in the manual to the beneficiary’s daily activities in any meaningful way. The AAO noted that it was unclear whether these reading materials will be read during class, or whether the beneficiary will be expected to have read them before class. The AAO noted further that the record lacked sample lesson plans, which would have allowed it to connect these reading materials to the training program. The AAO also questioned how the petitioner would be able to stretch 127 pages of reading material to cover a period of 24 months. Finally, the AAO noted inconsistent testimony with regard to the actual length of the program: the petitioner testified on the Form I-129 and letter of support that it would last 24 months, but stated in the training manual that it would last 18 months.

The document entitled “Fundamentals of Facilities Management, Planning and Project Management with Focus on Commercial Property” does not clarify these issues. It fails to provide a meaningful description, beyond generalities, of what the beneficiary would actually be

doing, and it also fails to connect the reading materials contained in the training manual to the beneficiary's daily activities in any meaningful way, and it does not address the AAO's questioning of how it will stretch the material contained in the training manual over a period of 18 to 24 months. While the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program, 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. This document fails to establish that the proposed training program does not deal in generalities. Moreover, the petitioner's testimony on the Form I-129 and letter of support that the training program would last 24 months, its testimony in the training manual that it would last 18 months, and its testimony in this document that it would last "around" 18 months is not indicative of a training program with a fixed schedule. Nor do the resumes of [REDACTED] [REDACTED] and [REDACTED] or [REDACTED] March 18, 2008 letter address these issues.

The AAO, therefore, concurs with the director's determination that the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(I), which requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program, or 8 C.F.R. § 214.2(h)(7)(iii)(A), which precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Nor do any of the petitioner's submissions satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G), which precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified. As the AAO noted in its November 17, 2008 decision, the petitioner stated in the training manual that "the Operations Manager is in-charge of full supervision," and that "each Course and/or program will be facilitated by an individual expert in that field. . . ." However, there was no indication in the record of how the operations manager's normal job duties would be accomplished while she is supervising the beneficiary. Nor was any evidence regarding the qualifications of those "individual experts" submitted.

[REDACTED] March 18, 2008 letter does not address these issues. The document entitled "Fundamentals of Facilities Management, Planning and Project Management with Focus on Commercial Property" does address the issue of the beneficiary's supervision. It states that the petitioner's operations manager "is in-charge of full supervision." It states that each course and module of the proposed training program will be facilitated by trainers who specialize in the subject being taught, but that those trainers are required to submit reports and recommendations to the petitioner's operations manager. However, this explanation does not address the specific issues raised by the AAO in its November 17, 2008 decision: (1) how the operations manager's normal job duties would be accomplished while she is supervising the beneficiary; and (2) the qualifications of the trainers who will be submitting reports and recommendations to the operations manager regarding the beneficiary's progress. Nor do the resumes of [REDACTED] [REDACTED] and [REDACTED] address these matters. First, [REDACTED]'s resume indicates that her employment with the petitioner ceased in January 2008, so the relevance of her resume to this proceeding is unclear. Nor does [REDACTED]'s resume answer any of these questions. The

question of how the operations manager will be able to perform his normal job duties while supervising the beneficiary is particularly relevant given the petitioner's testimony on the Form I-129 that it has only one two employees. As the stated in its previous decision, absent a a description of which duties would be delegated, and the persons to whom the various duties would be delegated, the AAO cannot find that the petitioner has established that it has the personnel to provide the training specified in the petition.

The petitioner has failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career outside the United States; that it has adequately described the type of training and supervision to be given, and the structure of the training program, and resolved the issues raised by the AAO in its discussion of this issue; that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and that it has sufficiently trained manpower to provide the training specified. The petition, therefore, may not be approved. The director's decision is affirmed.

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 director's July 16, 2009 decision is affirmed. The petition is denied.