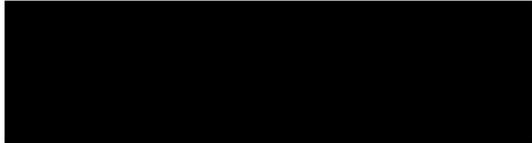




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FILE: EAC 08 256 51888 Office: VERMONT SERVICE CENTER

Date: FEB 16 2010

IN RE: Petitioner:  
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:



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).

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 “restaurant chain” that seeks to employ the beneficiary as a 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 additional evidence (RFE); (3) the petitioner’s response to the director’s RFE; (4) the director’s denial letter; and (5) the petitioner’s 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 establish that the proposed training is unavailable in the beneficiary’s home country.

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 a statement submitted by the petitioner, it stated that it is a “food service company operating a sushi manufacturing and commissary facility and seven full-service Asian restaurants under the brands Sushi Maki and Canton.” The petitioner explained that the training program is unique because it offers “our know-how in large-scale manufacturing, sales and distribution of sushi food.” The petitioner also explained that it is “engaged in a vertically integrated sushi program with plans to expand to cruise ship sushi programs,” and the goal of the training program is “developing a trained workforce that has experience in the cruise ship industry and that has undergone the petitioner’s proprietary training modules of Sushi Maki.” The petitioner also stated that the training program will prepare the beneficiary for the career of Sushi Food Manufacturing, Sales and Distribution – Operations Management.

The training program will provide training in five key areas: (1) Japanese Culinary Arts and Cuisine, (2) Sushi manufacturing and Sanitation; (3) Sushi Sales and Marketing; (4) Wholesale Distribution and Routing; and (4) Hospitality Administration and Finance. The training program will consist of approximately 1070 hours of classroom instructions and 2930 hours of on-the-job training. The petitioner also submitted a training manual that states the purpose of the manual is to “serve as a building block of practical and technical skills needed to prepare our new corporate support members for a career in the restaurant business.”

On December 12, 2008, the director requested additional information. In part, the director requested additional information regarding the availability of this type of training in the beneficiary’s home country.

In the response letter, dated January 12, 2009, counsel for the petitioner explained that the training is not available in the beneficiary’s home country and stated the following:

Currently, the petitioner is engaged in a vertically integrated sushi program with plans to expand to cruise ship sushi programs.

The petitioner is an operator of restaurants and catering services in the Florida and Caribbean region. The petitioner distributes directly to the Florida market and utilize[s] an extensive network of outsourced distributors and sales people to penetrate the cruise line industry in the Caribbean.

The midterm goal of the petitioner is to develop their own production and capabilities to service the cruise ships directly. To achieve this goal the petitioner is developing a trained workforce that has experience in the cruise ship industry and that has undergone the petitioner’s proprietary training modules of Sushi Maki.

The petitioner also submitted the same statement previously filed with the petition. On appeal, counsel for the petitioner reiterated the same information submitted with the petition and with the

RFE. In addition, counsel stated that the training program is not available in the alien's home country because the "state of the art of [the petitioner's] personnel and techniques are far superior and are not found in the alien's home country."

The director found that the petitioner failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration that the proposed training is not available in the alien's own country, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner to submit a statement which indicates the reasons why the training cannot be obtained in the alien's 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 itself 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 stated above, counsel for the petitioner contends that the training program is not available in the Philippines because the petitioner's "personnel and techniques are far superior and are not found in the alien's home country," and the training program is "key to the long term goal of establishing a vertically integrated sushi program with plans to expand to cruise ship sushi programs." Although the petitioner explained that the training is specific to the petitioner, it did not provide any corroborating evidence to support that claim. The petitioner did not provide evidence that the Philippines does not have other food manufacturing facilities that provide similar services that the petitioner does. In addition, the petitioner stated that the training program will "prepare the beneficiary to pursue the career of an International Restaurant Operations Manager, which would be an Operations Manager specifically trained to perform in the Sushi Food Manufacturing, Sales and Distribution business." Thus, if the petitioner believes that the beneficiary can pursue a career abroad with the training provided, the petitioner never explained why the beneficiary cannot receive the training abroad if a career is available in her home country. 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, it is not clear how the petitioner is connected to the food manufacturing facility. Upon review of the petitioner's website, <http://www.cantonrestaurants.com/>, it states that the petitioner owns three Chinese restaurants in Florida. It does not mention any ownership of a food manufacturing facility. In the support statement, the petitioner stated that it is a "food service company operating a sushi manufacturing and commissary facility and seven full-service Asian restaurants under the brands of Sushi Maki and Canton." However, the petitioner did not submit any documentation of a joint venture with Sushi Maki and Canton and ownership of the manufacturing food facility. 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).

Beyond the decision of the director, the petitioner failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career outside the United States. The regulation at 8 C.F.R. § 214.2(h)(7)(2)(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 by the petitioner, in the present case, the goal of the training program is to “develop their own production and capabilities to service the cruise ships directly.” As noted above, the petitioner wishes to penetrate the cruise ship industry in the Caribbean. If the beneficiary will return to her home country in the Philippines, it is unclear how she will find a career abroad with the petitioner in expanding its business to cruise lines in the Caribbean. Furthermore, the petitioner did not provide any documentation corroborating its goal to expand abroad such as a business plan, lease space abroad, financial backing abroad or creating an international office. Again, 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. at 165.

Beyond the decision of the director, the petitioner failed to demonstrate that it has an established training program, and the petitioner failed to submit evidence that the training program does not deal with 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. Much of the information 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 two-year program, but the petitioner’s outline of the program consists of a general outline for each topic, including general definitions of key concepts used in the industry. Much of the training outline consists of restaurant operations that can be learned at any restaurant. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis.

Nor has the petitioner explained how the different phases would be divided among the portions of the training program devoted to classroom training, written and oral presentation, and practical training. A breakdown of how the classroom training, written and oral presentation, and practical training components of the sections of the proposed training is not provided for in any of the parts. Instead, the petitioner provided a general breakdown of classroom time and practical training time. 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. As such, it has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

For all of these reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.