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U.S. Citizenship
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FILE: WAC 07 189 53986 Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 2008**

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.

Robert P. Wiemann, 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 headwear manufacturer, importer, and exporter that seeks to employ the beneficiary as a quality assurance trainee for a period of 22 months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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; (3) the petitioner's response to the director's request; (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 six grounds: (1) that the petitioner had failed to adequately describe the career abroad for which the training will prepare the beneficiary; (2) 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; (3) that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program; (4) that the petitioner had failed to set forth the proportion of time that will be devoted to productive employment; (5) that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; (6) that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

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 June 5, 2007 letter of support, the petitioner stated the following:

[The petitioner] was established in 1925 and is a premium manufacturer, importer, and exporter of quality headwear, including hats, caps, and visors . . . The company is especially well known for its line of headwear tailored to the golf market. Headquartered in Los Angeles, California, [the petitioner] is committed to the highest standard in headwear. . .

With regard to why it is offering the training program, the petitioner stated the following:

Utilizing our profits and our connections with our national and international affiliates, we have been seeking to expand our operations outside of the United States and making our name known worldwide. Through research and planning, we have found that starting a business overseas to be cost effective and profitable to our operations, as it will drive down costs.

As a result, we will need . . . representatives to ensure that our goals and objectives are accomplished overseas. We, therefore, wish to place [the beneficiary] as a Quality Assurance Trainee. With the training that [the beneficiary] will receive, she will be fully qualified to become our Quality Assurance Manager to guarantee that the quality of [the petitioner's] products remains the same no matter where they are generated from. . . .

Upon completion of the training program, [the beneficiary] will play a vital role in the potential success of our operations abroad, since [the petitioner's] success is achieved through its reputation for quality products. Therefore, the training program is essential in ensuring our policies and goals are maintained to that end.

The petitioner explained that its proposed training program would consist of four phases. The first phase would consist of two sessions: (1) the first session, entitled "General Orientation: Company Structure, Personnel & Policy," would last one month, and (2) the second session, entitled "Management Level Exposure," would last three months. The second phase would consist of five sessions: (1) the first session, entitled "Product Development," would last two months; (2) the second session, entitled "Quality Costs," would last three months; (3) the third session, entitled "Quality Management," would last two months; (4) the fourth session, entitled "Inventory Management," would last three months; and (5) the fifth session, entitled "Product Purchasing," would last three months. The third phase would consist of four sessions: (1) the first session, entitled "Company's Computer Architecture," would last one month; (2) the second session, entitled "Company Software & Machine Equipment," would last one month; (3) the third session, entitled "Computer Structure Analysis," would last one month; and (4) the fourth session, entitled "Technical Documentation," would last one month. Finally, the fourth phase would consist of a one-month review.

Upon review, the AAO agrees with the director's determination 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 adequately describe the career abroad for which the training will prepare the beneficiary. The AAO agrees. 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, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

In her February 13, 2008 denial, the director stated the following:

[T]he petitioner has not adequately described the career abroad for which this training program will prepare the alien. The petitioner states that “After the training, the trainee will be sent back to her home country to initially establish our company structure, coordinate with business partners and perform quality assurance and managerial duties as necessary.” The petitioner by their own admission indicates that their branch office in the Philippines is currently being researched. This is supported by the lack of evidence in the record pertaining to an existing or currently pending Philippine affiliate. Although, the record does contain a job offer letter, dated November 10, 2007, the letter indicates that branch is up coming. . . .

In his April 14, 2008 appellate brief, counsel states the following:

The Petitioner seeks to establish an Asian branch office by using its profits and by using its network of vendors and multinational clients in the United States, Canada, Europe, Africa, Australia, and the Pacific Rim. The Petitioner currently outsources production operations to China . . . However, due to their Chinese partners’ rising costs of production, the Petitioner seeks to establish a branch office in the Philippines to allow for greater control over production costs, product consistency, and distribution methods. For this reason, the Petitioner is offering a quality assurance training program to train a quality assurance manager for its upcoming branch office abroad. The Petitioning employer has consistently provided the reasons why it wants to establish an overseas branch office and why it needs a quality assurance manager for the branch office.

The AAO agrees with the director’s analysis. Again, the reason for creation of the training program at issue here 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 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.

The petitioner’s intentions are not the issue; the issue is whether there existed, at the time the petition was filed, a career abroad in which the beneficiary would utilize the training she obtains through the proposed training program. The petitioner has not demonstrated that such a position existed at the time the petition was filed. It has not demonstrated that such a position exists at the present time.

There is no evidence in the record of proceeding to indicate that the petitioner had any concrete¹ plans for such expansion at the time the petition was filed. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Accordingly, the petitioner has not established that the proposed training would prepare the beneficiary in pursuing a career abroad.² The petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4).

The director also found 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, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO agrees.

The director stated the following in her denial:

The petitioner, however, has not shown that it has a structured training program. The training program, does not include the number of hours that will be spent in each individual session or list the instructors for each individual session, lecture hours, equipment usage, anticipated student learning outcomes, textbook(s), recommended readings, method of instruction, materials needed[,] or grading criteria. The record does indicate that the President, who is to oversee the training and supervision at all times, will

¹ Although some of the internet printouts and inquiries submitted by counsel on appeal were printed before the petition was filed, the AAO notes nonetheless that none of these documents binds the petitioner to pursuing any course of action and do not constitute documentary evidence that a career abroad exists, even at this time. There is no indication that there existed, for the beneficiary, a position abroad at the time the petition was filed.

² The AAO notes the petitioner's assertion in its December 23, 2007 response to the director's request for additional evidence that even if the beneficiary does not accept employment with the petitioner in the Philippines after completing the proposed training program, that "she will be able to utilize what she has learned in any relevant position in the Philippines." In making this assertion, counsel is in essence asserting that the skills to be imparted by the proposed training program go beyond those that are specific to the petitioner's company. If the AAO were to accept this argument, which it does not, the AAO would be compelled to enter a finding that the petitioner had failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and (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. If the petitioner is now asserting that the skills and knowledge that the beneficiary would learn during the proposed training program are not specific to the petitioner, and could be used at other companies, the AAO questions why the beneficiary cannot obtain such skills in the Philippines. The petitioner has failed to demonstrate the lack of availability of quality assurance management in that country. For example, the AAO notes that, according to its website, the Philippines Textile Research Institute (PTRI) describes its mission on its website, in part, as "providing for the attainment of . . . technical competence in textile production and quality assurance." See <http://www.ptri.dost.gov.ph/aboutptri.htm> (accessed July 21, 2008). It is unclear to the AAO how this government agency would be able to recruit employees to carry out this mission if such training were not available in the country.

have time to conduct training 50 hours a week, by allocating his work to subordinates. The timelines here would need to be broken down into significantly more discrete segments, with more information about how the time would be utilized, to meet the terms of the regulations. The regulations clearly state that a training program cannot be approved if it deal in generalities with no fixed schedule, objectives, or means of evaluation.

On appeal, counsel submits additional information in rebuttal of the director's findings. However, the AAO finds that the petitioner's description of its proposed training program remains deficient. The evidence of record remains 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. While the petitioner is not required to account for every minute of the beneficiary's time, it must provide information as to how the beneficiary would actually be spending the bulk of her time. Summary descriptions of how the beneficiary would spend months of time are insufficient. Nor is the training manual sufficient: the record does not support a finding that the petitioner would be able to spread this 106-page booklet across 22 months of training.

For all of these reasons, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the record fails to demonstrate the existence of a training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

The director also found that the petitioner had failed to adequately describe the type of training and supervision to be given, and the structure of the training program. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

The AAO incorporates here its previous discussion regarding the vague and generalized nature of the petitioner's description of what the beneficiary would actually be doing while participating in the proposed training program. Again, the evidence of record remains 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. Providing a list of vague goals to be accomplished or skills to be imparted does not substitute for a description of what the beneficiary would actually be doing. While the petitioner is not required to account for every minute of the beneficiary's time, it must provide information as to how the beneficiary would actually be spending the bulk of her time. The petitioner has failed to provide a meaningful description of what the beneficiary would actually be doing, on a day-to-day basis, while she participates in the proposed training program. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(1).

The director also found that the petitioner had failed to set forth the proportion of time to be devoted to productive employment; that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; and that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training, as required by 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(2), (3), and (6). The AAO disagrees. The petitioner provided this information in its June 5, 2007 letter of support and supporting documentation. Accordingly, the AAO finds that the petitioner has overcome the concerns of the director in this regard, and it withdraws that portion of the director's decision finding otherwise.

For the reasons set forth in the preceding discussion, the AAO will not disturb the director's denial of the petition.

WAC 07 189 53986

Page 8

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.