

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D4

FILE: WAC 07 228 52176 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 The director's decision will be withdrawn and the matter remanded for further action.

The petitioner is a home health agency that seeks to employ the beneficiary as a home healthcare billing management 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 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 two grounds: (1) that the petitioner had failed to establish that the proposed training program is not incompatible with the nature of the petitioner's business or enterprise; and (2) that the petitioner had failed to establish 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 July 23, 2007 letter of support, the petitioner stated the following:

[The petitioner] is a corporation duly formed and existing since 2000. The company provides complete home health care management services to individuals and institutions. [The petitioner] utilizes a full staff of highly trained Registered Nurses, LVNs, Physical Therapists, Dieticians[,] and CHHA to deliver a comprehensive home health care plan. The company utilizes the latest computer technology in every aspect of its operations. . . .

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

Medical billing and coding are an integral part of our business. Because our own specialized system defines our success, [the petitioner] has determined that proper management of our medical billing systems operations is essential. Therefore, [the petitioner] decided to train [the beneficiary] in our Home Healthcare Billing Management Program to effectively obtain the specialized skills and techniques utilized by [the petitioner] in [the] U.S. The goal of the training program is to train [the beneficiary] in all aspects of billing operations and equip her to possess the expertise necessary to perform the responsibilities of a managerial position at [the petitioner] abroad. Upon completion of the Training Program, [the beneficiary] will be placed in a managerial position at [the petitioner] in the Philippines where she will oversee and manage billing operations, which will enhance standardized operations of business and billing operations of [the petitioner] and which [will] ultimately improve the overall profitability of [the petitioner].

In the training program outline submitted at the time the petition was filed, the petitioner stated the following:

The Trainee will acquire an in-depth theoretical knowledge of the sophisticated techniques and industry-specific expertise of home health care billing management services. As well, the Trainee will rotate through various departments for supervised practical training in health information management procedures in the clinical setting. Since the home healthcare services take place in the United States, the Trainee will need to have a thorough understanding of policies, procedures, and guidelines of home healthcare billing operations in the U.S., as well as proprietary knowledge of [the petitioner's] finance operations.

The petitioner also explained, at the time the petition was filed, that its proposed training would consist of four phases: (1) Orientation (which would last one month); (2) Home Healthcare Accounting/Finance Administration (which would last six months); (3) Billing and Medical Coding (which would last seven months); and (4) Billing Management (which would last eight months). According to the petitioner, the beneficiary would spend four hours each day in "theoretical instruction" (classroom instruction) and four hours each day in practical training.

The director found that the petitioner had failed to demonstrate that the proposed training program is not incompatible with the nature of the petitioner's business or enterprise, as required by 8 C.F.R. § 214.2(h)(7)(iii)(B). **The AAO disagrees.**

In her November 9, 2007 denial, the director stated the following:

The petitioner has submitted advertising that indicates that they recruit nurses, therapist[s], and aid[e]s and employs them as home health care provider[s]. Their advertising indicates that they hire licensed and experienced health professionals. . . .

* * *

[T]he record is insufficient to establish that the training program offered to the beneficiary is not incompatible with the nature of the petitioner's business or enterprise.

In his December 7, 2007 appellate brief, counsel states the following:

As a home health care provider, Petitioner operates a substantial infrastructure with thirty-six employees and \$1.9 million in annual revenues . . . In addition to providing actual patient treatment and healthcare program planning, Petitioner also directly manages the complex, but vital, back-office component of the operations – the medical coding, medical billing[,] and other back-office operations. Billing management includes navigating the intricate, and often, convoluted, regulations that govern Medicare, Medicaid, and U.S. commercial insurance billing sources as well as private-pay services. The back-office processing functions are so critical that failure to adhere strictly to the regulations and protocols governing the industry, which involve both the clinical processes as well as the billing aspects, could result in inappropriately paid, denied[,] or suspended claims. In addition, United States agencies have increased scrutiny of home care billing practices, particularly Medicare and Medicaid, rendering regulatory compliance even more important to avoid possible fraud and abuse issues.

Because of the complexities involved in home health care billing operations and financials, as detailed above, managing the process is such a costly affair that Petitioner has decided to launch an office in the Philippines, which will serve as an off-shore facility for medical billing, medical coding[,] and other back-office operations. Petitioner has determined that transferring its business-critical back-office operations to the facility in the Philippines will allow it to become more efficient.

The back-office facility in the Philippines will be managed by the Beneficiary upon her completion of the training program in the United States. . . .

The AAO agrees with counsel's analysis, finds it to be consistent with the record of proceeding, and finds no basis for a determination that the proposed training program is incompatible with the nature of the petitioner's business or enterprise. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(B), and the AAO withdraws the director's finding otherwise.

The director also found that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. The AAO disagrees. 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.

In the training program outline submitted at the time the petition was filed, the petitioner stated the following:

The goal of the training program is to provide the Trainee with a wide range of training in all aspects of [the petitioner's] efficient and U.S. style of business/home health care billing management. . . .

In his July 23, 2007 letter of support, counsel stated the following:

The combination of theoretical and practical training in the innovative billing practices and protocols for home healthcare at [the petitioner] is not available in the Philippines.

In response to the director's August 7, 2007 request for additional evidence, the petitioner submitted a letter from [REDACTED], Ph.D., C.F.A., F.R.M., Associate Professor in the School of Business at Hofstra University. In his October 24, 2007 letter, [REDACTED] stated, in pertinent part, the following:

I believe that the home healthcare billing management training program at [the petitioner's place of business] represents a unique form of highly proprietary training which cannot be found in The Philippines. . . .

In her November 9, 2007 denial, the director stated the following:

The petitioner claims that the training is not available in the Philippines, however [it] has provided no documentary evidence of this. The Philippines has extensive training available in the medical field. A search of the internet shows that there are several sites that offer medical billing training from home.

On appeal, counsel emphasizes, as did [REDACTED] the proprietary nature of the proposed training:

[F]or a company such as Petitioner where United States managers will not directly oversee the candidate in her role abroad, the importance of the company's proprietary routines, billing procedures[,] and operations imparted to the trainee during the training program becomes even more critical.

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.

In the present case, however, the reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.¹ Moreover, the petitioner in this particular case has submitted

¹ The AAO bases its finding in this regard on the fact that the beneficiary would be learning about the petitioner's unique business practices. It specifically does *not* enter a finding that knowledge of general principles of medical billing cannot be obtained in the Philippines. As noted by the director, many companies in the United States are offshoring their back-office operations to the Philippines, and the offshoring of medical billing plays a major role in such offshoring. For example, the ePacific Global

evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another facility. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in the Philippines, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Therefore, the petitioner has overcome both grounds of the director's denial, so the AAO will withdraw the director's decision to deny the petition.

However, the petition as presently constituted may not be approved. 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. As noted above, the AAO has 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 these 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 the present case and also as noted above, 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 (again, if the knowledge can be used at employment other than for the petitioner, it is therefore not specific to the petitioner's business, and therefore can be obtained in the Philippines pursuant to footnote 1).

Contact Center (EGCC), a company based in California, provides outsourced services in the Philippines. EGCC states the following on its website: "Offshoring medical billing to the Philippines is appealing . . . Since outsourcing is a key industry in the country, clients are assured that medical billing will be taken seriously. Call center schools in the Philippines are training people not only in customer service but also in medical transcription and billing. Graduates become medical billing experts who have knowledge of medical terms and health service procedures and laws. They are trained in computer programs, bookkeeping and typing." See <http://www.epacificglobal.com/articles/?id=Offshoring-medical-billing-to-Philippines> (accessed July 25, 2008). Outsourcing Strategies International (OSI), based in Oklahoma, is a similar company. OSI stated the following on its website: "[OSI] has achieved a top rank in the world market of business outsourcing [and] medical outsourcing . . . mainly due to the quality of its work and moderate pricing. Healthcare organizations and professionals gain a lot by opting for offshore medical billing services. OSI offers quality offshore medical billing at moderate pricings and in minimum time. Offshore medical billing services are available for hospitals, clinics, insurance companies, multinational groups, physicians' groups and so on . . . OSI has offshore units located in India and the Philippines . . . Offshore medical billing centers feature state-of-the-art technology, excellent infrastructure and talented manpower. . . ." See http://www.outsourcingstrategies.com/medical_transcription/offshore_medical_billing.htm (accessed July 25, 2008). The AAO presumes that the medical billing workers at these offshore facilities in the Philippines generally receive their training in the Philippines.

The petitioner has asserted that it will employ the beneficiary in the Philippines upon successful completion of the proposed training program. However, 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). In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary could 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 record, as presently constituted, contains no information or evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any evidence, beyond the assertions of record, to demonstrate that it is in the process of setting up operations in the Philippines. 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 petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(2)(A)(4) or 214.2(h)(7)(ii)(B)(4). Therefore, the petition may not be approved at this time.

However, as this was not one of the grounds for denial, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the petitioner has established that the proposed training would benefit the beneficiary in pursuing a career outside the United States. Specifically, the petitioner must submit documentary evidence of its plans for expansion into the Philippines. Absent such information, the record does not establish that the proposed training would benefit the beneficiary in pursuing a career outside the United States, since the proposed training is specific to the petitioner and the only setting in which he would utilize these skills would be for the petitioner in the Philippines. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's November 9, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.