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FILE: EAC 08 011 53315 Office: VERMONT SERVICE CENTER Date: JUL 01 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:

[Redacted]

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 full service, luxury hotel that seeks to employ the beneficiary as a management trainee for a period of twelve 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 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 demonstrate that the proposed training is unavailable in the beneficiary's home country; and (2) that the petitioner had failed to demonstrate that the proposed training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of 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 letter of support, the petitioner stated the following:

Hilton Hotels is the flagship of the Hilton Hotels Corporation. The Hilton name is one of the most recognizable names in the hotel industry. Hilton Hotels Corporation operates hotels under the following banners: Hilton Hotels, Hilton Garden Inn, Homewood Suites by Hilton, Hampton Inn, Hampton Inn & Suites, Embassy Suites Hotels, Doubletree, and Conrad Hotels. . . The Hilton Family has grown to over 500 hotels around the world. . . .

[The beneficiary] will train at the Hilton Washington hotel. The Hilton Washington is located in the heart of the nation's capital. The Hilton Washington has over 100,000 square feet of event facilities and over 1,000 guest rooms. The Hilton Washington has 760 full-time employees, and employs a full-time Human Resources staff on-site. The Hilton Washington also employs a full-time onsite Training Manager. . . .

In the training plan outline submitted at the time the petition was filed, the petitioner stated the following with regard to why it is providing the training:

The objective of Hilton Washington is to expose the trainee . . . to a wide range of activities in hotel management and operations. Throughout the program, the trainee will acquire and develop the necessary skills to operate and manage a hotel, including the various departments within the hotel.

The Trainee's experiences at Hilton Washington will provide an invaluable opportunity to develop the Trainee's skills and to enhance his professional reputation in his home country (Mexico). The Trainee's experience with the United States travel and tourism industry and his tutelage with an accomplished and outstanding hotel management firm operating a well-established hotel brand will greatly enhance his employability in Mexico and around the world. . . .

The petitioner explained that the proposed training program would be based in the petitioner's front office. From that base, he would gain exposure to four departments (1) food and beverage; (2) accounting; (3) housekeeping; and (4) various hotel operations. The beneficiary would spend three months in each of these departments. The beneficiary would also participate in classroom instruction, taking part in the petitioner's "University on the Hill" program, which was discussed by the petitioner as follows:

Specifically, Hilton Washington is the local facility which hosts Hilton's University on the Hill training program. The University on the Hill program models a formal university program, consisting of four (4) years, designated as Freshman, Sophomore, Junior, and Senior years.

[The beneficiary] will complete the Freshman and Sophomore core curriculum during his training at Hilton Washington. A complete course listing for the University on the Hill is

provided. Additionally, several individual course descriptions from the University on the Hill curriculum are attached as well.

In its November 12, 2007 response to the director's request for additional evidence, the petitioner offered additional evidence regarding the proposed training program. Specifically, the petitioner stated the following:

The Beneficiary will divide his time each week according to the percentages listed below:

Classroom & One-on-One Training:	approximately 25% (10 hours)
On-the-job Training:	approximately 40% (16 hours)
Incidental Productive Employment:	approximately 35% (14 hours)

* * *

Attached is the full course description for the Freshman and Sophomore programs within Hilton's University on the Hill Program. This Program will be an integral component in the Beneficiary's Training Program. Additionally, the Beneficiary will spend one (1) day each week exclusively shadowing various managers within our departments. This will be a second significant component of the training offered.

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 visa.

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

In its letter of support, the petitioner stated the following with regard to why the training is unavailable in Mexico:

The training offered to [the beneficiary] is not available in his home country of Mexico. While there are hotels in Mexico, the level and quality of service varies. It is critical if [the beneficiary] plans a career working with tourists, and particularly American business travelers and tourists, that [he] have exposure to [the] standard American concepts of service and hospitality. Because [the beneficiary] will be trained in American hospitality and services, the training he receives with Hilton Hotels will be vastly different from the training available in Mexico. . . .

In his November 16, 2007 denial, the director stated the following:

When determining if the proposed training is available in the beneficiary's home country USCIS considers more than whether the petitioner itself offers similar training (although USCIS notes that the petitioner has five Hilton-branded hotels in Mexico). The record

must demonstrate that similar training is unavailable anywhere in Mexico whether it would be provided by the petitioner or another entity. Simply stating that business practices in the U.S. are different from those practiced in Mexico, or the petitioner offers services to clients at a higher level of quality does not establish eligibility. The petitioner has not explained how Food and Beverage, Accounting, Housekeeping[,] and Hotel Operations processes and procedures in the U.S. are different from those in Mexico. . . .

The petitioner has failed to provide evidence that similar training is unavailable in Mexico or demonstrate that such training must be obtained in the U.S.

On appeal, counsel offers additional evidence regarding the petitioner's "University on the Hill" curriculum. Counsel explains that the training to be imparted via the training program is specific to the petitioner's "way of conducting its business, its best practices[,] and unique approach to operating its hotels." Given the size and complexity of the petitioner's business operations, the AAO finds it reasonable that it would conduct a training program that would impart skills specific to its method of conducting business. 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.

The director also found that the petitioner had failed to establish that the proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the field. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

In his October 23, 2007 request for additional evidence, the director stated the following:

The beneficiary already possesses a Bachelor's degree in Tourism/Hotel Management and completed an 18 month program at the petitioner's business enterprise as a trainee . . . [The director] is not persuaded that the beneficiary does not already possess substantial training and expertise in the proposed field of training.

In its November 12, 2007 response to the director's request for additional evidence, the petitioner offered the following rebuttal:

The Beneficiary has completed an 18-month J-1 program with Hilton. During this J-1 program, the Beneficiary focused 100% of his time within our Front Desk program. In particular, the Beneficiary worked with guest relations, helped address guest concerns, provided check-in and check-out for hotel guests, and answered calls. All of these activities are directly and exclusively related to our Front Desk function. First, as indicated in the Training Plan, attached hereto, the Beneficiary's training will include rotations through four (4) departments, none of which perform Front Desk functions. Second, as indicated in the University on the Hill Course outlines, none of the courses for the Beneficiary will include courses related to Front Desk functions. Accordingly, the training to be offered to [the beneficiary] is dramatically different from the training he previously received. In fact, it is only because of his exceptional performance during his J-1 program that the Beneficiary is eligible for participation in the Training Program outlined above and in our Petition.

In his November 16, 2007 denial, the director stated the following:

A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency and efficien[cy]. The beneficiary possesses a degree in the particular field of study . . . The beneficiary completed an 18-month J-1 exchange program that allowed the practical application of skills and knowledge in U.S. hotel management. The record establishes that the beneficiary has substantial training and expertise in the field.

Counsel states the following on the Form I-290B:

The Center also erred in stating that [the beneficiary] already possesses substantial training and expertise in the proposed field of training. [The beneficiary] has a basic knowledge of the hotel industry and substantial training re: front desk operations, but [the beneficiary] does not have a substantial knowledge of Hilton Hotels' overall management and operational practices.

Counsel states the following in his appellate brief:

The Service . . . references [the beneficiary's] college coursework and participation in the Hilton Hotels Corporation's Exchange Visitor Program as evidence that he "has substantial training and expertise in the field." While general college coursework may provide a basic understanding of the hotel business, it does not constitute "**substantial training and expertise**" in managing and operating a Hilton Hotel [emphasis in original]. Hilton occupies a prominent place in a highly-competitive industry. Hilton achieved this by developing and applying its own methodologies, processes[,] and procedures for managing its business. Hilton developed its University on the Hill program to ensure that its management trainees receive in-depth training in Hilton's unique way of doing business. In addition, although [the beneficiary] received significant Front Desk Operations training through the Exchange Visitor Program, this is not evidence that he has substantial training or expertise in all areas necessary to become a successful Hilton Hotel manager.

The record does not support counsel's analysis. The beneficiary possesses a bachelor's degree in tourism, with a major in hotel management. His college transcript indicates that while earning this degree, he took such courses as Administration; Introduction to Tourism; National and International Heritage Tourism; Food and Beverage I and II; Hotel Administration; Accounting; Technology for Lodging I and II; Travel Agencies; Tourism Legislation; Quality of Services; Quality; Human Resources Administration; Public Relations; Recreational Activities Organization; Foreign Language for Services I, II, III, and IV; Groups and Conventions; Tourism Planning; and Sales Promotions.

The beneficiary is certified as a "Technical Professional in Hotel Management" by the National College of Professional Technical Education in Mexico. He also completed an 18-month training program sponsored by the petitioner.

A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965). Although the petitioner proposes to train the beneficiary as a management trainee, the record establishes that the beneficiary has substantial training and expertise in the field of hotel management. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

Pursuant to the above discussion, the AAO agrees with the director's decision that the proposed training program does not meet the regulatory requirements for approval of the nonimmigrant visa.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(2)(B)(I) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program.

Excluding the information submitted by the petitioner regarding the petitioner's "University on the Hill" program, in which the beneficiary would spend only twenty-five percent of his time, the information contained in the record of proceeding 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.

For example, the beneficiary will spend three months learning about the petitioner's food and beverage department. However, the evidence of record does not indicate what the beneficiary will actually be doing during this time. The petitioner provides a "training goal," which is to "[u]nderstand the food service portion of the hotel, including various shifts and the level of service expected from the Hilton brand." Providing a "training goal" is not synonymous with providing a meaningful description of what the beneficiary will actually be doing during this time. Further, while the petitioner provides the names of five trainers, it offers no information regarding who will be instructing the beneficiary at specific times.

The beneficiary will also spend three months learning about the petitioner's accounting department, three months learning about its housekeeping department, and three months learning about its "various hotel operations." The petitioner's description of how the beneficiary will spend these nine months, during the time in which he will not be participating in the "University on the Hill" program, suffers similar deficiencies. The petitioner again fails to explain how the beneficiary will actually spend his time during these rotations while learning the skills discussed in the training program outline. This vague, generalized description fails to explain what the beneficiary would actually be doing on a day-to-day basis. 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.

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. The petitioner has failed to satisfy 8 C.F.R. §214.2(h)(7)(2)(B)(I), and 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of the petition. For this additional reason, the petition may not be approved.

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.