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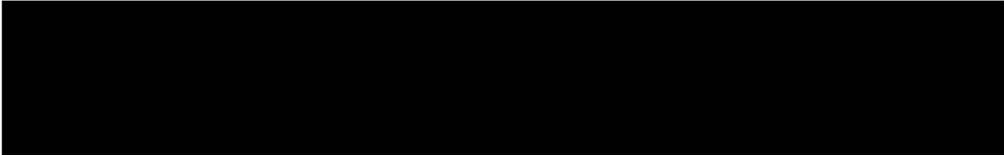
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FILE: WAC 07 155 50586 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2008

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.

for Michael T. Kelly
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 The director's decision will be withdrawn and the matter remanded to the service center for issuance of a new decision.

The petitioner is a property management company that manages 32 shopping centers in eight states.¹ It seeks to employ the beneficiary as a "retailing and leasing of modern shopping centers trainee" for a period of twenty-two 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 notice of intent to deny the petition; (3) the petitioner's response to the director's notice; (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 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.

On appeal, the petitioner 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.

¹ The petitioner leases retail space in its 32 shopping centers to over 500 tenants.

- (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.

The petitioner submitted a detailed outline of its proposed 22-month training program at the time the petition was filed, and submitted further details in response to the director's notice of intent to deny the petition. As those details are part of the record and are not at issue here, they need not be repeated.

The sole issue on appeal is whether the petitioner has met its burden of proof in establishing that it has complied with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(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.

In its April 10, 2007 letter of support, the petitioner stated the following:

[W]e will teach the beneficiary fundamental principles that he should be able to apply equally to private investments as well as his corporate property management career. The beneficiary will learn how to evaluate and select investment properties, set up favorable leasing terms and conditions, maximize tax advantages while [the petitioner] minimizes expense and turnover, manage day-to-day operations, maintain and improve [the petitioner's] property and put it to the highest and best use. [The beneficiary] will rotate to different departments and different offices to observe and to have on the job supervised training. This will enable the trainee to know the practice of every aspect of our business and ultimately enable the trainee to manage the forthcoming branch office in consistent policies and goals.

* * *

Headquartered in Los Angeles, CA, we maintain a very close organized operation to keep in line with the overall goal and policy of [the petitioner]. The substance of training focuses on the United States market, its business environment[,] and the sophisticated property management system[;] equivalent training is unavailable outside the United States. In accordance with the trend, [the petitioner] always keeps pace with the new technologies and we are constantly developing new, more innovative methods of incorporating the new technology into our logistics. Exposure to this level of technology is not possible in the trainee's home country, the Philippines.

The AAO notes that, in the 31-page outline of the proposed training program submitted at the time the petition was filed, the petitioner proposes training that, at several places, is specific to the petitioner. For example, during the sixth component of the proposed training program, the beneficiary will spend a great deal of time learning about the petitioner's system of centralized management; how the petitioner formerly operated under a system of decentralized management; and how making the change has strengthened the company. During the seventh component of the proposed training program, the beneficiary would spend time studying the petitioner's demographics; its unique methods of marketing its shopping centers; and its unique method of market entry.

In its August 15, 2007 response to the director's notice of intent to deny the petition, the director stated the following as to why the training cannot be obtained in the Philippines:

[The petitioner] established its training program to train future employees and overseas workers in the retailing and leasing of modern shopping centers. Equivalent training is not presently available outside of the United States. The training program covers [the petitioner's] unique strategies and operating systems. It specifically emphasizes [the petitioner's] centralized administration and data management system, which the company uses to manage the vast amount of data from its 32 shopping centers. **The infrastructure and expertise that enable [the petitioner] to maintain our current success is located at our headquarters in the United States** [emphasis in original]. Thus, the combination of industry-specific instruction and practical training is not presently available in the Philippines.

Furthermore, [the petitioner] possesses the facility and sufficiently trained manpower to provide the training specified. Our highly qualified trainers possess years of experience in the property industry and have acquired expertise in all aspects of property management.

In its appellate brief, the petitioner states the following:

The business expansion is focused in Asia, specifically the Philippines where the real estate business is currently booming and growing. Having a branch in the Philippines will enable the Petitioner-Appellant to offer professional services that [are] consistent with the corporate goals, mission and vision, [and] values of [the petitioner].

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 entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.² Moreover, the petitioner in this particular case has submitted 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

² The AAO bases its finding in this regard on the sole basis of the fact that the beneficiary would be learning about the petitioner's unique business practices. It specifically does *not* enter a finding that a knowledge of general principles of property management cannot be obtained in the Philippines. For example, the De La Salle Professional Schools, located in the Philippines, offer a post-graduate diploma in property management. See <http://www.dlsp.edu/ph/index.php?cat=67&id=34> (accessed May 8, 2008). The AAO also notes the existence of many property management companies in the Philippines, and presumes that at least some of their property managers received training in the Philippines; see, e.g., <http://www.ayalaproperty.com/ph> (accessed May 8, 2008) (Ayala Property Management Corporation which, according to its website, has a 20-person management team); <http://www.colliers.com/Markets/Philippines/about/AboutUs> (accessed May 8, 2008) (Colliers International which, according to its website, has a staff of 50, as well as 150 on-site property management staff); http://www.cpmi.com.ph/index_frame.htm (accessed May 8, 2008) (Centuries Property Management which, according to its website, manages 47 buildings and is the largest property management company in the Philippines); and <http://www.fpdglobal.com> (accessed May 8, 2008) (FPD Integrated Services, Inc.).

petitioner has overcome the grounds of the director's denial, and the director's decision to the contrary is withdrawn.

However, the petition as presently constituted may not be approved. 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 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 his newfound knowledge. Since his 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 he would be able to use the knowledge.

The petitioner has asserted that the beneficiary will aid it in establishing operations in the Philippines. 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 would utilize his skills would be for the petitioner in the Philippines, 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). 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 13, 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.