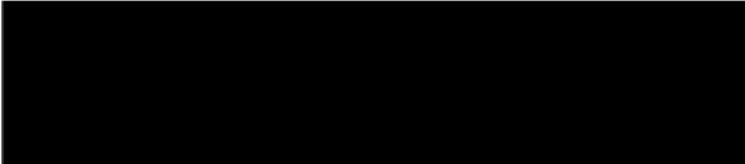


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FILE: EAC 07 105 51859 . Office: VERMONT SERVICE CENTER Date: NOV 03 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

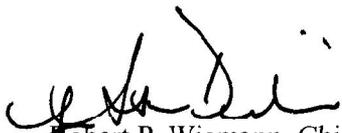
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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 an Irish pub that seeks to employ the beneficiary as a 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 seven grounds: (1) that the petitioner had failed to demonstrate that the proposed training is unavailable in the beneficiary's home country; (2) that the petitioner had failed to demonstrate that 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) that the petitioner had failed to demonstrate that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; (4) that the petitioner had failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career abroad; (5) that the petitioner had failed to demonstrate that the proposed training does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (6) 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; and (7) that the petitioner had failed to demonstrate that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

On appeal, counsel contends that the director erred in denying the petition. Specifically, counsel states that the director interpreted the law erroneously, and did not correctly apply the law to the facts of the case.

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 the "Training Program Overview" submitted at the time the petition was filed, the petitioner stated that the proposed training program would be composed of fifteen phases: (1) Orientation; (2) Computer Hardware and Software Training; (3) Basic Kitchen Instruction; (4) Initial Food Prep Processes; (5) Regional Culinary Overview; (6) Procurement/Selection; (7) Accounting, Bookkeeping, Inventory, and Inventory Control; (8) Instruction from the Master Chef/Final Food Preparation; (9) Special Culinary Subjects; (10) Cheeses; (11) Wines; (12) Mixed Drinks and Bar Issues; (13) Managerial, Front of the House, and Menu Training; (14) Marketing Training; and (15) Independent Study.

In its undated letter of support, the petitioner stated that "[a] breakdown of the core program reveals circa 80% of time is in classroom and instruction, the balance onsite review and presence (non participatory) at a range of sales, marketing, vendor[,] and management meetings."

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 demonstrate that the proposed training is unavailable in Ireland, the beneficiary's home country. The AAO agrees. 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.

The director raised this issue in his April 30, 2007 request for additional evidence. In response, the petitioner submitted an August 27, 2007 letter from [REDACTED], the proprietor of The Irish Inn at Glen Echo, a dining establishment in Glen Echo, Maryland. Mr. [REDACTED] stated the following with regard to the availability of similar training in Ireland:

I am thoroughly familiar with the hospitality business in my native country, Ireland, and with the restaurant industry in the Washington-Baltimore metropolitan area, having a combined 35 years [of] experience in both countries. I previously owned two restaurants in this area, which I sold to open my current high-end establishment in Glen Echo, Maryland. I can attest that the restaurant business in this area offers distinct advantages to a trainee from Ireland – opportunities that are not yet available in that country.

This area provides a highly competitive and varied restaurant environment that caters to a sophisticated and well-informed clientele. In order to succeed, restaurants must continually provide creative menu selections, must stay abreast of the industry's cutting-edge trends, and must successfully market their fare. In comparison to Ireland, the industry in this area requires a more complex menu, often incorporating recipes of more than one culinary tradition originating from multiple geographic areas. . . .

In addition, the clientele here requires restaurants to be highly responsive to consumer trends (including, for example, organic, heart-healthy and low sodium foods and food preparation). While the Irish population in general is starting to become more health conscious at home, healthy eating issues have not yet changed the restaurant training process there.

In his January 25, 2008 denial, the director stated the following:

[Y]ou have not demonstrated that training to manage an Irish pub can only be done in the United States and not in the beneficiary's home country of Ireland.

Counsel offers the following rebuttal in her March 20, 2008 appellate brief:

Petitioner submitted a detailed letter setting forth the differences between the restaurant and hospitality business in Ireland and the business in the United States. The purpose of the training program is to provide marketing¹ and management training; it is not, as the Service implied, to receive training in how to manage an Irish establishment. As stated in the underlying submission, training in the American-style of restaurant management and marketing will provide the beneficiary with a distinct advantage in Ireland as that country continues its rapid economic expansion and becomes a destination point for international business travelers.

The AAO agrees with the director. In reaching its conclusion, the AAO notes first the deficiency of the letter from [REDACTED] it finds that an inadequate factual foundation to support his opinion has been established. Mr. [REDACTED] does not note the location, size, or industry of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. The extent of his knowledge of the proposed training program is, therefore, questionable. Nor has he established that he is qualified to opine on this matter, as he submits no evidence to document his assertions regarding his qualifications and work history. 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)). Thus, the petitioner has not established the reliability and accuracy of his pronouncements, and this letter is therefore not probative of any of the criteria at issue here. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner submitted no evidence beyond the letter of Mr. Hughes in its response to the director's request for additional evidence in order to demonstrate the lack of similar training in Ireland, and on appeal elects not to supplement the record with additional evidence that was not before the director at the time he issued his decision. Accordingly, the record contains no evidence in support of 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) or 214.2(h)(7)(ii)(B)(5) beyond the defective August 27, 2007 letter from Mr. Hughes. Accordingly, the record as presently constituted does not satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) or 214.2(h)(7)(ii)(B)(5).

¹ According to the "Restaurant Training Program" document submitted at the time the petition was filed, four weeks (phase 14) of the year-long training program would be devoted to marketing.

The director also found that the petitioner had failed to demonstrate that 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, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(2). The AAO agrees.

As will be developed more fully later in this decision, when the AAO specifically discusses the deficiencies in the petitioner's description of how the beneficiary would be spending her time while participating in the proposed training program, as well as the deficiencies in its description of who will be supervising the beneficiary, the record lacks specific details that would permit the AAO to determine that the beneficiary will not in fact be placed into the regular operation of the petitioner's business. For example, there are no class schedules, sample lesson plans, or sample reading materials. There is no indication of how the beneficiary would actually be spending her time, on a day-to-day basis, while participating in the proposed training program. As the petitioner has elected not to respond to this portion of the denial on appeal, it has failed to overcome the director's specific concerns regarding 8 C.F.R. § 214.2(h)(7)(ii)(A)(2). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director also found that the petitioner had failed to demonstrate that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(3). The AAO agrees, and incorporates here its previous discussion regarding the lack of details regarding how the beneficiary will actually be spending her time, on a day-to-day basis, while participating in the proposed training program. Again, there are no class schedules, sample lesson plans, sample reading materials, or any other evidence that would provide insight as to what the beneficiary would actually be doing. As the petitioner has elected not to respond to this portion of the denial on appeal, it has failed to overcome the director's specific concerns regarding 8 C.F.R. § 214.2(h)(7)(ii)(A)(3). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director found that the petitioner had failed to demonstrate that the proposed training would benefit the beneficiary in pursuing a career abroad. 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 its letter of support, the petitioner addressed these criteria as follows:

Upon successful completion of the program, the trainee will return to Ireland with a competitive hospitality advantage due to the knowledge and skills gained of international cuisine and cutting-edge restaurant management. . . .

The petitioner stated the following in its August 28, 2007 response to the director's request for additional evidence:

At the conclusion of the proposed training, the trainee will be prepared to assume a high-level restaurant management position in Ireland with skills and experiences that exceed those of persons trained exclusively in Ireland. The trainee will specifically be qualified to be a manager of a high-end restaurant, including restaurants on the cutting edge of the industry in Ireland and those positioning to cater to the increasing number of foreigners traveling to Ireland on business.

On appeal, counsel states the following:

As stated in the underlying submission, training in the American-style of restaurant management and marketing will provide the beneficiary with a distinct advantage in Ireland as that country continues its rapid economic expansion and becomes a destination point for international business travelers.

The AAO agrees with the director. The petitioner has failed to establish that there is in fact a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. First, the AAO incorporates here its previous discussion of the deficiencies contained in the letter submitted by the petitioner from Mr. [REDACTED]. Further, the petitioner has submitted no documentary evidence to establish that the skills identified by the petitioner as beneficial for the beneficiary's career abroad, such as "training in the American-style of restaurant management and marketing," are actually in demand in Ireland. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, if the Irish restaurant industry has yet to embrace the trends identified by the petitioner, such as organic, heart-healthy, and low sodium foods, thereby rendering training on such trends unavailable in Ireland, then it is unclear how the beneficiary would utilize those newly acquired skills upon her return to Ireland, if restaurants there have yet to embrace them. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) and 8 C.F.R. § 214.2(h)(7)(ii)(B)(4).

The director also found that the petitioner had failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. 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 AAO agrees with the director. The information contained in the record of proceeding 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. Goals and objectives are presented, but lists of goals and objectives are not substitutes for descriptions of how those goals and objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing during this time.

For example, the sixth phase of the proposed training program would last four weeks. The petitioner's description of how the beneficiary would spend this period of time consists of a two-sentence summary. The seventh phase of the training program would also last four weeks; the petitioner's description of how the beneficiary would spend this time consists of a four-sentence summary. The eleventh phase of the training program would also last four weeks; the petitioner's description of how the beneficiary would spend this time consists of a one-sentence summary. The twelfth phase of the training program would also last four weeks; the petitioner's description of how the beneficiary would spend this time consists of a three-sentence summary. Nor is any other evidence submitted, such as sample lesson plans or copies of reading materials, which would assist the AAO in determining how the beneficiary would be spending her time. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every hour, or even every single day, of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing for much of the proposed training program, and counsel elects not to provide additional information regarding what the beneficiary will actually be doing on appeal. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found 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. 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.

The record indicates that the beneficiary has been working for the petitioner in J-1 status since 2004. The record lacks any evidence explaining how the beneficiary's work experiences while in J-1 status differ from those of the proposed training program. However, counsel and the petitioner have elected not to respond to this portion of the director's denial. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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). As the petitioner has failed to respond to the director's concerns in this regard, it has therefore failed to overcome them. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

Finally, the director found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The AAO agrees. The record contains no documentary evidence of the petitioner's ability to provide the classroom training specified in the petition, as it contains no pictures, floorplans, or any other evidence of its physical plant, despite the director's explicit request for such evidence in his request for additional evidence.

Nor has the petitioner established that it has sufficiently trained manpower to provide the training. In its letter of support, the petitioner stated that its senior management would provide "core induction instruction," and provided the names of its general manager; its functions and banquet manager; its assistant general manager; its executive chef; and its sous chef. However, the petitioner has failed to explain which individuals would supervise which portions of the training program, and it has failed to provide evidence of these individuals' stated qualifications. Nor has the petitioner explained how, if it does not employ full-time trainers, the individuals who will provide the training will perform their normal duties. It has failed to establish that it has sufficiently trained manpower to provide the training outlined in the petition. For all of these reasons, 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition.

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

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.