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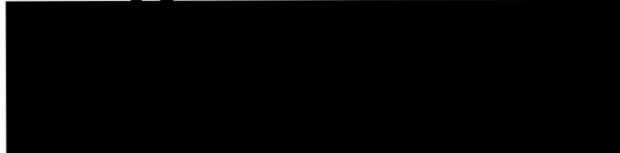
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FILE: WAC 07 800 13383 Office: CALIFORNIA SERVICE CENTER Date: **NOV 25 2008**

IN RE: Petitioner: 
Beneficiary:

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)

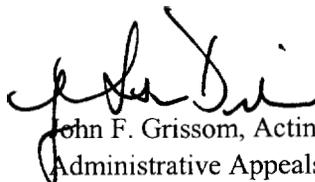
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting 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 horse trainer that seeks to employ the beneficiary as a trainee for a period of five 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 Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

Counsel submitted the Form I-290B on July 11, 2008. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. The AAO did not receive this additional brief and/or evidence. As such, the AAO deems the record complete and ready for adjudication.

The director denied the petition on two grounds: (1) 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; and (2) 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.

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 his March 3, 2008 response to the director's request for additional evidence, counsel described the proposed training program as follows:

The employer would like to provide training to the beneficiary in the selection and purchase of yearling race horses at the principal sales companies in the United States of America. The training requires going to yearly auction sales in New Jersey, Kentucky, Pennsylvania, New York, and Florida. The trainee will study pedigrees and the performance information in the sales catalogs . . . The trainee will learn how to measure each selected yearlong, and learn how to identify conformation faults or defects. The trainee will learn how to compare yearlings based on pedigrees, sire lines[,] and maternal families. The trainee will learn how to calculate an estimated auction sales price. . . .

* * *

There is no classroom instruction. There is no on-the-job training. There is no productive employment. The training consists of accompanying [the petitioner] on trips to all of the principal breeding farms and consignors, to observe and evaluate the gait of the yearlings in motion, both in pastures or fields as well as in paddocks being led with ponies. . . .

The training requires visual inspection or observation of thousands of yearlings, to develop an "eye" for identifying superior conformation and physical characteristics . . . It is not a subject that can be imparted through theoretical lessons or written materials. It can only be learned through direct observations and actual yearling sales experiences. . . .

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 it has an established training program that 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 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; the petitioner has not explained how the beneficiary will actually be spending her time. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, 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. Nor is it clear that the training program has a fixed schedule or means of evaluation. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the director properly denied the petition on this ground.

The director also 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 disagrees. While the evidence contained in the record of proceeding does not satisfy the other regulatory criteria at issue in this case, it does establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified in the petition. The proposed training program as presented in the record indicates that the training specified in the petition can be provided by a single individual, and that he will be able to perform his normal duties while providing the training. The record also indicates that the proposed training would not take place at the petitioner's business headquarters but rather at various locations across the United States. The AAO, therefore, withdraws this portion of the director's decision.

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.