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FILE: WAC 08 079 50778 Office: CALIFORNIA SERVICE CENTER Date: SEP

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 appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a company involved in the design, manufacturing, and marketing of various high-performance computer products and accessories. It seeks to employ the beneficiary as an engineering trainee for a period of 18 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 it has the physical plant and sufficiently trained manpower to provide the proposed 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 January 10, 2008 letter of support, the petitioner stated the following:

[The petitioner], established in 1993[,] is involved in the design, manufacturing and marketing of various high performance computer products and computer accessories including main board[s] for server[s] and workstation[s] to provide complete solution[s] for Server systems and Internet equipment. [The petitioner] is a leading edge technology company that provides high quality, reliable products for servers, workstations, multimedia PCs and home computers. [The petitioner's] Server and Workstation Building Block Solutions consist of motherboards, high quality chassis, power supplies and other key components. We currently have over 700 employees. Our gross annual sales exceeded \$200 million with net income to be approximately \$10 million. . . .

* * *

[The petitioner] has a subsidiary in Taipei, Taiwan. Part of its focus is to provide quality assurance and technical support to our customers in S.E. Asia for our comprehensive line of server products. . . .

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

In order to expand our market in Taiwan & China and to provide the newest technology of our products and systems to our increasing pool of customers, we have established an in-house training program here in the U.S. headquarters without our new products development teams to help our employees in Taiwan learn the newest development of our server products and systems and to improve their engineering knowledge and technical expertise in our proprietary design in the areas such as: server boards, workstations boards, chassis, thermal design and subsystems, power supply, high speed circuits boards layout[,] and system thermal optimization.

The petitioner stated that the beneficiary would learn the design concept and architecture of the petitioner's high performance server systems; learn the petitioner's standard technical support and quality control procedures; receive training on the petitioner's manufacturing process; receive training on product management; receive training on testing environments; and receive training on the petitioner's product development process.

The petitioner explained that its proposed training program would consist of two components: (1) six months of formal classroom instruction; and (2) 12 months of rotational assignments in various groups.

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 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.

In its February 25, 2008 response to the director's request for additional evidence, the petitioner stated that it did not employ full-time trainers. Rather, the proposed training program would be "taught collaterally and supervised by the Directors of the Departments and their assigned staff such as Sr. Engineers and Project Managers." The petitioner provided the names of six individuals (senior director of hardware research and development; director of design validation; senior server system

director; senior director of product development—technical services; vice president of engineering; and director for chassis department) who would provide classroom instruction, but also stated that those individuals could assign these training duties to their subordinates.

In her March 14, 2008 denial, the director stated the following:

Upon review of the petitioner's organization chart, it can be observed that all the alleged trainers hold key positions within the organization and work directly for the CEO. It is unreasonable for USCIS to conclude that these individuals could abandon their important positions and professional duties to conduct training for one individual in a classroom environment. Further, it has not been established [that] these individuals have the experience, qualifications, or need knowledge to teach the subject matter outlined in the training program. Although the petitioner indicates these individuals may assign their qualified subordinates to conduct the classroom instruction, no specific individuals have been identified. . .

On appeal, the petitioner states the following:

Since it is not certain when the H3 trainee will be here, the Director will not be able to finalize the names of the specific trainers whose availability would depend on departments['] own project schedules and individuals['] work schedules. Per the Service Center's request, we attach herewith the list of engineers who tentatively will be teaching during the training programs. All of our trainers possess either bachelor's degrees or master's degrees with at least three years of working experience with the petitioner and hence they are all qualified to teach the proprietary technology to the trainee.

The AAO finds that the petitioner has still failed to meet its burden. While the petitioner has provided a list of names, it has not established that they possess the degrees claimed. Absent evidence establishing that these individuals in fact possess the background they are claimed to have, such as copies of their diplomas, the AAO is unable to determine that they are in fact qualified to conduct the training. 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 failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

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)(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 its January 10, 2008 letter of support, the petitioner stated the following:

The beneficiary . . . received a Bachelor's and a Master's degree in Electronic Engineering and Computer Engineering from National Taipei University of Technology in 2004 and 2007 respectively. He was recently hired as a Principal Engineer for our subsidiary in Taiwan and he will be responsible for leading the engineering design and development of our new server products for Taiwan and S.E. Asia markets. Before he joined us, he worked for Quanta Computer, Inc., Foxconn Electronics, Inc., Advantech Co., [and] Twinhead Corporation in Taiwan as an Engineer. He has experience in hardware system design and IC firmware design, server/station and mother board design. . .

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). The petitioner proposes to train the beneficiary as an engineering trainee. The beneficiary possesses a bachelor's degree in electronic engineering and a master's degree in computer engineering. He also has work experience in the field. The record establishes that he has substantial training and expertise in the field. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

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.