U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D4

[redacted]

FILE: EAC 08 193 50951 Office: VERMONT SERVICE CENTER Date: DEC 0 1 2009

IN RE: Petitioner: [redacted]
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:

[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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 petitioner is a "chain of high end restaurants" that seeks to employ the beneficiary as a management trainee for a period of eighteen 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 evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and, (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on multiple grounds: (1) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (3) the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad. 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, dated June 17, 2008, the petitioner stated that the "administration and evaluation of specific training phases will be delegated to various company officials (e.g., general manager, chef, accountant) according to the dictates of the program." The petitioner also stated that it is unique because of its "high-end cuisine and beverages, a plush expertly-designed setting, the welcoming and familiar atmosphere of an authentic Irish pub, and the sophisticated management of an American family of top-flight restaurants." The petitioner also explained that its interest in the training program "lies in the possibility of improved relations with the Irish hospitality industry." The petitioner further stated that "approximately 80% of the training will be classroom-type and practical instruction." The petitioner provided a bibliography list of seven books to be used during the training program.

The petitioner submitted an outline of the restaurant training program which is broken down into the following phases: Orientation (1 week); Health and Safety in the Workplace (1 week); Computer Hardware and Software Training (6 weeks); Basic Kitchen Instruction (1 week); Management, Front of the House and Menu Training (12 weeks); Initial Food Prep Processes (2 weeks); Regional Culinary Overview (2 weeks); Procurement/Selection (4 weeks); Accounting, Book-keeping and Inventory and Inventory Control (12 weeks); Instruction from the Chef/Final Food Preparation (4 weeks); Special Culinary Subjects (3 weeks); Wines (4 weeks); Mixed Drinks and Bar Issues (4 weeks); Catering and Special Events (4 weeks); Marketing Training (8 weeks); and, Independent Study (6 weeks).

In response to the director's request for evidence, the petitioner's counsel added that the beneficiary has "scant training of any type in the restaurant industry" and it is limited to entry-level skills. The petitioner also stated that it has "abundant resources, facilities and personnel to train the beneficiary." In addition, the petitioner stated that the purpose of the training course is to train the beneficiary in a "type of restaurant management – the American-style management of a family of high-end restaurants at multiple locations that share similar menus and themes and have coordinated marketing efforts."

The petitioner also submitted the beneficiary's resume which states he has been employed with the petitioner for one year and five months in J-1 status. The beneficiary states in his resume that the training program "involves everything from providing a good service to the daily/weekly running of a successful business," and he has been trained as "server, filled in as a door man and also been involved in weekly inventories."

Although the director sent a request for additional information, the petitioner did not submit several of the documents requested by the director. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition

was adjudicated. The petitioner failed to submit the requested evidence. 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).

On appeal, counsel for the petitioner stated that the training program will teach American-style restaurant operations and "training in the major aspects of such a style, which is catered to the American taste and audience and not tempered to attract merely one ethnic group, cannot be and is not offered, to Petitioner and Beneficiary's knowledge in any of the programs offered at Ireland-based colleges and universities, including its culinary schools." Counsel further states that the program "can only be learned by direct experience in a U.S.-based and uniquely American-owned operation and is not the kind of experience that the Beneficiary can or should be required to obtain at one of the academic institutions."

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 failed to demonstrate that it has an established training program, and that the petitioner failed to submit evidence that the training program does not deal with generalities with no fixed schedule, objectives, or means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition where the petitioner submits a training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner has not established that its training program does not deal in generalities. Much of the information submitted by the petitioner 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. The program is an eighteen-month training program but the petitioner's outline of the program consists of nine pages, with a few sentences describing each phase of the program. It appears that several topics, such as wine, meat, food preparation, and computer skills will overlap in different phases and the petitioner does not explain how such topics will differ in each phase. In addition, the last six weeks of the program is independent study where the beneficiary will visit other restaurants. It seems that six weeks is a long time to visit other restaurants. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis.

Nor has the petitioner explained how the different phases would be divided among the portions of the training program devoted to classroom training, written and oral presentation, and practical training. A breakdown of how the classroom training, written and oral presentation, and practical training components of the proposed training is not provided for any of the parts. 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. Again, 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. It has failed to establish that its proposed training program does not deal in generalities. It has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

In addition, the petitioner did not provide an explanation of how the beneficiary will be evaluated throughout the training program. The outline provides a one-sentence evaluation process after each phase but does not provide any detail of that process. It is not clear what the beneficiary will be tested on since the training program outline only provides a general explanation of topics to be discussed but does not provide a syllabus that will be followed, information on how the material will be taught, information on the beneficiary's assignments, or how the materials will be used in order to learn the topics to be discussed.

The director also found that the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad. 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 reason for creation of the training program at issue here is to provide the beneficiary with a "competitive hospitality industry edge due to the knowledge and skills gained in American-style restaurant and hospitality management." The petitioner did not provide evidence to demonstrate that there is a setting in which the beneficiary will be able to use his newfound knowledge. The beneficiary can find work in the restaurant business in Ireland but will probably be required to follow the standards of that specific restaurant. The beneficiary's newfound knowledge will be specific to the petitioner, and thus, an operation run by the petitioner would be the only setting in which he would be able to use the knowledge. 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 to demonstrate that it is in the process of setting up operations, or that it is currently operating, in Ireland. 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.

The director also found that the petitioner failed to establish that the proposed training could not be obtained in Ireland, the beneficiary's home country. 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 AAO notes that 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. In other words, 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.

The petitioner stated in a letter dated August 28, 2007, that at the conclusion of the training, the trainee will be trained in the "American restaurant scene." The petitioner did not explain how the "American" procedures differ from the restaurant and hospitality operational procedures 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. at 165.

Beyond the decision of the director, the petitioner 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(*2*) requires a demonstration 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(*3*) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The AAO incorporates its previous discussion regarding the vague and generalized description of the training program contained in the record, particularly regarding the rotational assignment portions of the training. Without additional information regarding what the beneficiary will actually be doing while he is being rotated through several divisions of the petitioner's business, the AAO concludes that he will in fact be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, and that he will engage in productive employment beyond that incidental and necessary to the training. The petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(ii)(*2*), 214.2(h)(7)(ii)(A)(ii)(*3*), or 214.2(h)(7)(iii)(E).

In addition, the beneficiary already possesses substantial training and expertise in the proposed field of training. 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 director noted that the beneficiary recently completed a training program on a J-1 visa on restaurant/food services management. The beneficiary's resume indicated that he was employed with the petitioner for one year and five months. The training received by the beneficiary was stated to be limited to entry-level training, but the beneficiary worked with the petitioner for over a year and has already become familiar with the menu, the ordering computer system, the front of the house operations, and inventory, several issues that are components of the proposed training program. The petitioner did not submit any evidence to support a finding that the training the beneficiary received in the J-1 training program was substantially different to the training that will be provided by the petitioner and thus, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(C).

Finally, the petitioner failed to demonstrate that it has sufficiently trained manpower to provide the training specified. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified. On the Form I-129, the petitioner indicated that the beneficiary will be employed in a restaurant located in New Canaan, Connecticut. The petitioner also stated that the training program will be evaluated and supervised by several managers of the restaurant such as the general manager, the chef and the accountant. The petitioner did not explain how the general manager, chef and accountant can continue their day-to-day duties of running a restaurant that serves a lunch and dinner menu, for eighteen months, and also provide classroom training and on-the-job training to the beneficiary. 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. at 165.

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 AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, 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.