



U.S. Citizenship
and Immigration
Services

D4



FILE: EAC 09 059 50924 Office: VERMONT SERVICE CENTER Date: DEC 01 2009

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:
[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 petition will be denied.

The petitioner is a restaurant that seeks to employ the beneficiary as a food and beverage management trainee for a period of twenty-four 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.

On January 30, 2009, 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 beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; (3) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (4) 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 December 3, 2008, the petitioner stated that it “provides in depth training to its candidates for future Restaurant Management positions overseas.” Specifically, the trainee will be employed by the petitioner’s affiliate company in France in a managerial position. The petitioner stated that the training program will provide the beneficiary with a “thorough knowledge of our products and U.S. business techniques.” The petitioner also explained what the beneficiary will learn during the training program as follows:

The Trainee will acquire English fluency and knowledge of the American restaurant and hospitality culture. The Trainee will be exposed to the day to day operations of a restaurant in the United States. The Trainee will learn how to support operational execution to run food operations. The Trainee will learn how activities are coordinated between the production facilities and the food and beverage outlet and between the kitchen and the counter. The Trainee will learn how the inventory and procurement of food are handled and how inventories and products are managed. The Trainee will also learn the safety rules associated with a restaurant.

The petitioner also stated that the training is not available in the trainee’s home country for the following reasons:

[The petitioner] managed to mix one very specific type of French food with the American eating habits. Furthermore[,] the Trainee will have to perfect his English language skills to help him dealing with [the petitioner] in the U.S. and in FRANCE and with English speaking customers. The Trainee will acquire English fluency and knowledge of the American restaurant and hospitality culture. . . . The Trainee will be exposed to the day to day operations of a French American restaurant in the United States to better serve American and English-speaking customers as well as Latin-American cultures. Because our target customer is from the United States, it is of the utmost importance that our managers will have undergone training in the U.S. restaurant cultures and such training can only be obtained in the U.S.

The petitioner submitted an outline of the restaurant training program. The outline listed the trainee supervisors and instructors as follows: Months 1 to 6: [REDACTED]; Months 7 to 12: [REDACTED]; Months 13 to 18: [REDACTED] and, Months 19 to 24: [REDACTED]

The training outline lists two phases. The first phase is class room instructions. The outline states that the trainee will have 5 hours of classroom instruction per day from Months 1 to 12, and 3 hours of classroom instruction per day from Months 13 to 24. Phase two of the training program will consist of rotational training and will be broken down as follows: (1) Management (Month 1 to 6); (2) Production/Operations (Months 7 to 12); (3) Customer Service (Months 13 to 18); and, Safety and Health Management (Months 19 to 24).

The petitioner also submitted a letter, dated December 3, 2008, on letterhead from [REDACTED]. The letter stated that it intends to hire the beneficiary upon completion of his training in the United States. The letter also stated that the beneficiary will "acquire a very valuable knowledge about catering to American and other English-speaking customers that will help us develop and improve the services provided to such customers, mostly U.S. customers." The letter was signed by the general manager of the petitioner.

In response to the director's request for evidence, the petitioner reiterated the same information submitted with the initial filing. Although the director sent a request for additional information, the petitioner did not submit several of the documents requested by the petitioner. For example, the director noted that the training program outline is vague and requested several documents to further explain in detail what instruction and practical training will be part of the training program; however, the petitioner sent an almost identical copy of the training program that was initially submitted. 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).

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 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 a two-year training program but the petitioner's outline of the program consists of five pages. For example, the beneficiary will spend a whole month of classroom instruction on "receiving and storing food" but the petitioner's description of how the beneficiary would spend this period of time is one sentence. Each month of classroom instruction is explained in one sentence, and the on-the-job training is explained in a few sentences for rotations that will last 6 months each. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis. 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. It is not clear on what the beneficiary will be tested since the training program outline only provides a general explanation of topics to be discussed but does not provide the syllabus that will be followed, information on how the material will be taught, information on the assignments that will be assigned to the beneficiary, or materials that the beneficiary will use in order to learn the topics to be discussed.

The director also found that 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 AAO agrees. 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 hereby 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 she will engage in productive employment beyond that incidental and necessary to the training. As such, 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).

The petitioner also failed to establish that the proposed training could not be obtained in France, 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 December 3, 2008, that at the conclusion of the training, the trainee "will acquire English fluency and knowledge of the American restaurant and hospitality culture." The petitioner also stated that the trainee will obtain a "valuable knowledge about catering to American and other English-speaking customers that will help us develop and improve the services provided to such customers, mostly U.S. customers." The petitioner did not submit any corroborating evidence to support the claim that the trainee cannot find training in the English language, and training of restaurant services that cater to foreigners in France. As France is a tourist destination for foreigners, including Americans, it is possible that a restaurant in France caters to foreigners and the beneficiary could receive training from that restaurant. 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 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 proficiency in the English language and a knowledge of restaurant services to American customers. The petitioner also submitted a letter from its affiliate restaurant in France stating that it will employ the beneficiary upon completion of his training. However, the letter was signed by the general manager of the petitioner in the United States. The petitioner did not provide any evidence to establish that the restaurant in France was indeed an affiliate of the petitioner, such as stock certificates, corporate stock certificate ledger, stock certificate registry, corporate bylaws, or shares issued to or by the petitioner and the claimed affiliate. 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. The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4).

Beyond the decision of the director, 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.

In reviewing the beneficiary's resume, he received a degree from a hospitality school in France, and worked in several restaurants in France. The petitioner did not explain how the experience the beneficiary already received in restaurant operations will differ from the training program provided by the petitioner. 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.

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.