



U.S. Citizenship
and Immigration
Services

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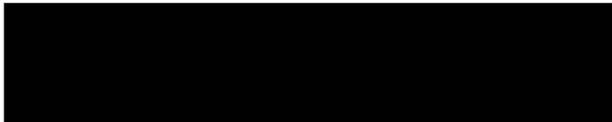
FILE: WAC 08 253 50752 Office: CALIFORNIA SERVICE CENTER Date: **DEC 01 2009**

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)

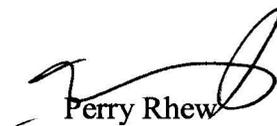
ON BEHALF OF PETITIONER:



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


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 school that seeks to employ the beneficiary as an administrative staff, trainee for a period of two years. 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 the ground that the petitioner failed to establish that it possesses the physical plant space and sufficiently trained manpower to provide the training.

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 support letter, dated September 16, 2008, the petitioner explained the purpose of the training program as follows:

The objective of the program is to prepare the trainee to learn all aspects of management as it relates to running and operating a Christian School that utilizes the method of Montessori teaching to impart knowledge to our young students. The trainee will learn about our orientation, staff handbook, review policies, staff conduct, parents communications, staff development, classroom set up, lessons planning, classroom management, circle time, discipline, lesson presentation, etc. In addition, the trainee will learn about mentoring from the mentor teacher by attending and observing the actual classroom and find ways to address the issues observed in the classroom. The trainee will also be trained on daily routine, decision making, budget planning, event planning, creation of manuals for training, parent handbooks, develop effective communications with parents, self confidence, curriculum development, planning and holding staff meetings, staff development, conflict resolution, parent education, labor laws, and hiring of staff.

The petitioner explained the core concepts of the training program as follows: Introduction and Overview (September 2008 to October 2008); (2) School Management and Administration (October 2008 to March 2009); Setting Course Curriculum (April 2009 to October 2009); Integration of Bible Studies into Core Curriculum (November 2009 to March 2010); and, Application of Knowledge (April 2010 to September 2010). The petitioner also stated that each day will consist of 75% instruction and 25% on-the-job training.

In addition, the petitioner stated that the training program will assist the beneficiary in opening a school in the Philippines. The petitioner stated that the beneficiary will be "exposed to all facets of the management of the School, which would enable her to learn what is necessary to open and manage her own [REDACTED]" The petitioner also submitted pages from its website.

On September 29, 2008, the director requested additional information. In a response letter, dated November 7, 2008, counsel for the petitioner stated that the petitioner has "considered training an opportunity to have managerial staff available in the Philippines to open a potential franchise in that country." The petitioner submitted two declarations stating that this training program is unavailable in the Philippines.

In addition, the petitioner submitted a Staff Handbook; a slide presentation of the petitioner's training curriculum; a Teacher Handbook; a Parent Handbook; a slide presentation of the [REDACTED]; a slide presentation of "Achieving Excellence"; performance review forms; a slide presentation entitled "What is [REDACTED] the petitioner's lease agreement and business license; and, photographs of the petitioner's premises. In the response letter, counsel for the petitioner stated that these materials will be utilized in the training program.

The director denied the petition because the petitioner failed to provide evidence to establish that the petitioner can employ a full time trainer, and simultaneously operate a training program and a business. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition where the petitioner has failed to demonstrate that it has the physical plant and sufficiently trained manpower to provide the training specified. The director noted that the petitioner has eight employees and it did not state who will provide the training to the beneficiary. The director also noted that the photographs submitted by the petitioner of its premises show play areas and classrooms for children who attend the school, and three photographs show two offices and a break room, which does not appear to be sufficient space to train the beneficiary.

On appeal, counsel for the petitioner states that "a small school doesn't have to have extensive facilities to provide the necessary training." Counsel further stated that the classrooms will be used for the training program when they are not being used by the students. In addition, the school director will be "primarily providing the training." The beneficiary will shadow her during her daily functions.

As noted above, the petitioner submitted a training outline that indicated that the beneficiary will receive 75% classroom instruction and 25% on-the-job training for two years. The Form I-129 stated that the petitioner employs 8 employees. On appeal, counsel for the petitioner stated that the director will primarily provide the training to the beneficiary. It is not credible that the petitioner's director can provide 75% of one-on-one instruction to the beneficiary which would leave little time to attend to other responsibilities. The petitioner has not demonstrated that it has sufficiently trained manpower to provide the training specified. In addition, the training program is for 2 years but many schools are closed during the summer months. It is not clear if the beneficiary will receive full-time training during the summer months when the children are not in school. 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)).

Beyond the decision of the director, the petitioner failed to establish that the proposed training program does not deal in 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 that deals in generalities with no fixed schedule, objectives, or means of evaluation.

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 provides a few sentences to describe each phase of the training program. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis.

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. In addition, the petitioner provided some handbooks and slide presentations it will utilize, however, it does not explain how the materials will be incorporated in the program. The petitioner did not provide a curriculum outline that it will follow. 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. 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).

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 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.