

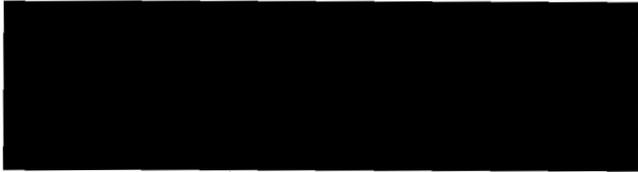
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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JUL 06 2009

FILE: WAC 08 104 51022 Office: CALIFORNIA SERVICE CENTER Date:

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)

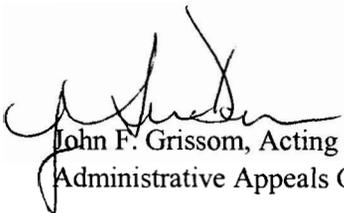
ON BEHALF OF PETITIONER:



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.

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).


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 real estate investment and property management firm that seeks to employ the beneficiary as a 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 request for 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 two grounds: (1) the petitioner had failed to establish that the proposed training program did not deal in generalities without a fixed schedule, objectives, or means of evaluation; and, (2) that the petitioner had failed to demonstrate that the proposed training is unavailable in the Philippines, the beneficiary's home country.

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

- (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 February 20, 2008 letter in support of the petition, the petitioner stated the following:

The purpose of the program is to educate the trainee in all areas of [the petitioner's] policies, procedures and professional skills relating to the specialized operations and management techniques needed for running a property management firm.

The program will last for 18 months and consist of 30 hours per week of academic and supervised practical training. Approximately 80% of training will be academic instruction, and 20% of training will be supervised practical training. The academic training involved studying the material provided by the company.

The petitioner also explained that the training provided by the petitioner is not available in the Philippines and stated the following:

The training program consists of material that focuses on property management as it relates to the operations of our company, [the petitioner]. The infrastructure and expertise that has enabled our company to maintain our current success is located at our headquarters in the U.S. Trainees will not be able to receive the same kind of exposure to quality property management techniques in the Philippines. Also, as we are planning to open our own branching office in the Philippines, we require our trainees to be familiarized with all the operational skills and standards that are native to our company. Thus, the combination of industry-specific theoretical instruction and practical training is not currently available in the Philippines and much be conducted in the United States.

The petitioner explained that the proposed training program would last 18 months and be composed of ten parts: (1) Introduction (4 weeks); (2) Introduction to Property Management (8 weeks); (3) [The petitioner's] Records Management (6 weeks); (4) General Guidelines to [the petitioner's] Management Acquisition Process (12 weeks); (5) Taxes and Insurance (4 weeks); (6) Legal Issues (4 weeks); (7) [The petitioner's] Residential Property Management (11 weeks); (8) [The petitioner's] Commercial Property Management (11 weeks); (9) Management: Starting an Overseas Office (8 weeks); and, (10) Review (4 weeks).

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 the proposed training program does not deal in generalities without a 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. The AAO disagrees. The petitioner submitted an outline and training program detailing the different areas of instruction the beneficiary will receive. The petitioner also submitted an outline and breakdown of subjects covered each week. The petitioner has overcome the ground of the director's denial, and the director's decision is withdrawn.

The director also found that the petitioner had failed to establish that the proposed training could not be obtained in the Philippines, the beneficiary's home country. The AAO disagrees with the director's finding on this matter. 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 director raised this issue in his request for additional evidence. In its response, the petitioner stated the following:

The substance of the proposed program focuses on property management emphasizing our company's policies in records management, the acquisition process, taxes and insurance, legal issues, residential property management, commercial property management, marketing, public relations, human resources and starting an overseas office pertaining to [the petitioner]. The goal is to apply these concepts in international markets as we prepare to open a facility overseas. The combination of classroom education and on-the-job training instruction will help prepare [the beneficiary] for employment as a property manager at our forthcoming Philippines branch. The trainee can only learn these company specific skills through the completion of our training program.

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. 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.

In the present case, however, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices. Moreover, the petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique that such knowledge could not be obtained at another training facility. The AAO finds that, in this case, the petitioner has established that the proposed training is not available in the Philippines, and finds that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Accordingly, the AAO withdraws that portion of the director's decision stating the contrary.

However, the petition as presently constituted may not be approved. 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 previously, the AAO has found the petitioner in compliance with 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). Again, the question to be addressed when attempting to satisfy these two criteria is not whether the petitioner offers this training in the alien's home country. 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.

As noted by the AAO, however, in the present case, the entire reason for creation of the training program is to train the beneficiary on the petitioner's own business practices.

Having made such a demonstration, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiary will be able to use her newfound knowledge. Since her newfound knowledge will be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge.

The petitioner has asserted that the beneficiary will aid it in establishing operations in the Philippines. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training. As the petitioner has not yet established its "upcoming branch" in the Philippines, there exists no setting in which she would be able to utilize her newfound 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 documentary evidence, beyond its own assertions, to demonstrate that it is in the process of setting up operations in the Philippines. The September 20, 2008 letter from the petitioner offering the beneficiary employment in the Philippines upon completion of the training program is not persuasive in this regard. 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). Accordingly, the petition may not be approved, and the AAO will not disturb the director's denial of the petition.

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.