

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DL

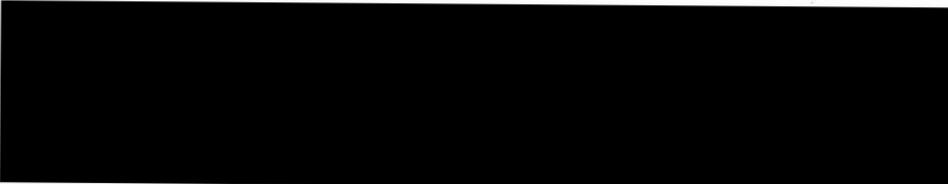


FILE: WAC 08 004 51134 Office: CALIFORNIA SERVICE CENTER Date: MAR 16 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

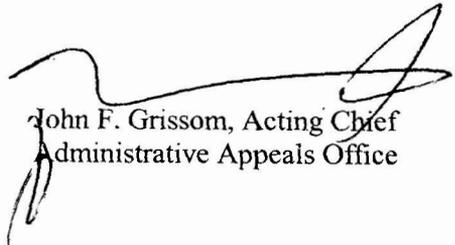
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



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.


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 The director's decision will be withdrawn and the matter remanded to the service center for entry of a new decision.

The petitioner is a car wash with a convenience store, and it seeks to employ the beneficiary as a management trainee for a period of twenty 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's second request for evidence; (5) the petitioner's response to the director's second request for evidence; (6) the director's denial letter; (7) the petitioner's request for a motion to reopen and reconsider; (8) the director's dismissal of the motion to reopen and reconsider; and, (9) 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 concluding that the petitioner had failed to establish that the proposed training program did not deal in generalities with no fixed schedule, objectives, or means of evaluation. 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 September 17, 2007 letter of support, the petitioner explained its aim in offering the training program, and explained the contents of the training program as follows:

Based on thorough research, [the petitioner's owner] is now interested in branching out of the U.S. and becoming an international business owner and will now focus his business on car washes. . . . In order to initiate a business in the Philippines, [the petitioner's owner] requires a loyal hardworking and effective manager to be placed in the Philippines. As a result, he implemented an innovative training program and invited [the beneficiary], a Philippines national, for the future position.

* * *

The primary intent of our management training program is to develop in the trainee a Manager point of view, where the Manager is responsible for the overall success of an enterprise. The thinking behind the Management course is: Management is Strategic Management, while Strategic Management is Strategy Formulation and Strategy Formulation is Planning, while Strategy Implementation is Organizing, Leading and Controlling. Therefore, the complementary or supporting objective of this course is to develop the "strategizing and executing" skills.

The petitioner also explained that the trainee will "undergo academic instruction and practical training 8 hours per day, 3-4 days per week." The petitioner also stated that the trainee will receive "approximately 65% academic training and 35% of supervised training."

In response to the director's second request for evidence, in a letter dated June 5, 2008, the petitioner explained that it does not employ full-time trainers, but the trainee will be instructed and supervised by the president, the operations manager and the assistant operations manager.

The petitioner stated that the proposed training program would consist of four phases: (1) Management Skills (1 month); (2) Quality Assurance (6 months); (3) Information Technology Systems (4 months); and, (5) Materials and Equipment Sourcing (5 months).

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 a 97-page 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.

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 by the petitioner, 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 in order to manage a branch office in the Philippines.

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, petitioner must document that it will commence operations in the Philippines upon completion of the training. 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, beyond the assertions of record, to demonstrate that it is in the process of setting up operations in the Philippines. 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 at this time.

However, the director did not focus directly on this issue. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director will afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the petitioner has established that the proposed training would benefit the beneficiary in pursuing a career outside the United States. Specifically, the petitioner must submit documentary evidence of its plans for expansion into the Philippines. Absent such information, the record does not establish

that the proposed training would benefit the beneficiary in pursuing a career outside the United States, since the proposed training is specific to the petitioner and the only setting in which he would utilize these skills would be for the petitioner in the Philippines. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 25, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.