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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
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Services

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MAY 04 2009

FILE: WAC 07 217 53501 Office: CALIFORNIA SERVICE CENTER Date:

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)

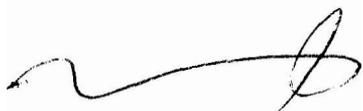
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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


John F. Grissom
Acting, Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center 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 an audio and video technology company specializing in high quality displays for the entertainment industry. It seeks to employ the beneficiary as an audio technician trainee for a period of 20 months. The petitioner, therefore, endeavors to classify the beneficiary as nonimmigrant 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 beneficiary was previous granted J-1 status to serve as a video technician trainee with the petitioner's organization and the petitioner now seeks to change and extend his nonimmigrant status.

The director denied the petition, concluding that the petitioner had failed to demonstrate that the proposed training is unavailable in Israel, the beneficiaries' home country and why it is necessary for the beneficiary to receive training in the United States.

On appeal, the petitioner contends that the director erred in denying the petition. The petitioner submits additional evidence in support of its claim that the training the beneficiary will receive is not available in the beneficiary's home country of Israel.

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.

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 sole grounds for denial of the petition was the petitioner's failure to establish that the training to be provided is not available in Israel, 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.

In a letter in support of the petition dated July 9, 2007, the petitioner stated that it is primarily focused on providing services to the entertainment industry. Specifically, the petitioner states that it "provides the newest projection and playback systems coupled with experienced and dedicated engineering staff for setups and operations." The petitioner indicated that it also rents digital cinema equipment such as DLP and LCD projection systems for test screenings and movie premiers, and sells projection systems to production and post-production facilities, as well as to corporate facilities, casinos and churches.

The petitioner described the proposed training program as follows:

The overall objective of this training program is to train this specific applicant to assimilate himself with our audio technology. He has demonstrated that he is proficient in video technology and would like to take this opportunity to thrive in a parallel trade that is recognized to be combined together.

* * *

His training will be focused in "technical maintenance and operations."

Throughout this program, the trainee will acquire training in the following areas: setting up and operating audio equipment including microphones, recording equipment, connecting wires and cables, sound and mixing boards, and all related electronic equipment. Attend events, meetings and conventions, oversee presentations, and new conferences. He will learn how to interface with other technicians such as the video utility technicians, the audio technician, the VC (Video Control), the broadcast engineer, the stagehands and the production sound mixer.

The petitioner further stated that the beneficiary "will be exposed to and learn techniques for operating and maintaining a variety of audio production equipment, as well as assisting with installation and corrective maintenance of broadcast equipment, transfer and duplication of records to other mediums."

Finally, the petitioner stated that "the training is not available to [the beneficiary] in his home country, Israel, as much of the equipment used in the program is not available in the applicant's home country, nor does the size of the events that [the petitioner] perform, typically occur in the applicant's home country." The petitioner stated that upon completion of the program, the beneficiary will return to Israel to apply his skills, and will "assist [the petitioner] once they begin to expand and develop their business in Israel."

The petitioner also attached a training plan for the beneficiary which indicates that he will receive training in the field of audio installation, operation, maintenance and service of audio equipment for a period of 18 months. The petitioner indicated that the beneficiary will receive the following specific skills:

- Basic knowledge to operate and maintain a variety of audio production equipment. Diagnose and resolve media system problems in an event
- Ability to record, mix and edit materials via digital audio work station
- Ability to evaluate the quality of recorded materials
- Set up and operate facilities for recording sessions, either live or taped. Collaborate with producer to establish audio needs. Monitor and mix various sound resources
- Check and edit daily network recordings for technical quality and ensure correct playback info in database.
- Assist with installation and corrective maintenance of broadcast equipment.
- Transfer recordings into mediums suitable for airing or archive. Provide duplication of recordings
- Confer with producers, performers, and others in order to determine and achieve the desired sound for a production such as a musical recording or a film.
- Set up, test, and adjust recording equipment for recording sessions and live performances; tear down equipment after event completion.
- Regulate volume level and sound quality during recording sessions, using control consoles.
- Prepare for recording sessions for performing activities such as selecting and setting up microphones.
- Report equipment problems and ensure that required repairs are made.
- Mix and edit voices, music, and taped sound effects for live performances and for prerecorded events, using sound mixing boards.
- Synchronize and equalize prerecorded dialogue, music, and sound effects with visual action of motion pictures or television productions, using control consoles.
- Record speech, music, and other sounds on recording media, using recording equipment.
- Reproduce and duplicate sound recordings from original recording media, using sound editing and duplication equipment.
- Separate instruments, vocals, and other sounds then combine sounds later during the mixing or post-production stage.

The director issued a request for additional evidence (RFE) on July 24, 2007. The director requested that the petitioner submit additional evidence to establish that the training offered by the petitioner is not offered in the beneficiary's home country of Israel. The director instructed the petitioner to state additional reasons and provide evidence to demonstrate why the training cannot be obtained in the beneficiary's country and why it is necessary for the alien to be trained in the United States. The director advised the petitioner that such

evidence could include, but is not limited to: publications that discuss the lack of availability of training in the beneficiary's home country; letters from professional, business, trade and licensing organizations stating their knowledge of the petitioner's training program and the lack of available of training in the beneficiary's home country; and affidavits or declarations from recognized authorities certifying as to the unavailability of the proposed training in the beneficiary's country.

The petitioner's response included the following documentation:

1. An excerpt from the "Multi Channel Audio" forum of an Israeli home theater website, found at <http://www.hometheater.co.il>. The beneficiary posted on the forum to ask whether its members "know of newspapers or magazines here in Israel that deals with HD technology or audio with HD in Israel," or with the audio technology field in general.
2. A copy of e-mail correspondence between the beneficiary and the "Media Department" of Ben Gurion University's Second Degree Office. The beneficiary asked whether the department offers paid training in the field of audio engineering. He received a reply stating that the area is not covered, with a suggestion that he contact the university's communication engineering department.
3. A letter of reference dated September 16, 2007 from [REDACTED]. Mr. [REDACTED] states that he trained with the U.S. petitioner for three months "due to the lack of available training facilities in Israel." He states that he now operates his own video and audio business in Israel, and notes that anyone who trains with the petitioner will benefit from "their vast engineering knowledge of High Definition video equipment and systems."

The director denied the petition on October 26, 2007, concluding that the petitioner failed to establish that the training to be provided is not available in the beneficiary's home country. The director discussed in detail the deficiencies of the evidence submitted in response to the RFE and concluded that the petitioner presented no probative evidence that audio technician training is not available in Israel.

On appeal, the petitioner asserts that the training to be provided is not, in fact, available in Israel. The petitioner submits three letters from persons experienced in the audio and video technology field in Israel. The letters are all similar in content. The authors indicate that HDTV technology is in the early stages of development in Israel, with few people purchasing HDTVs and no cable or satellite broadcasts currently available in high definition. All three authors indicate that many technicians are compelled to study abroad due to the lack of opportunity and development in Israel, particularly in HD technologies. The authors state that they have reviewed the petitioner's training plan, and indicate that they are not aware of any companies or organizations in Israel that offer similar training.

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 regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) 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.

As noted by the director, the evidence submitted in response to the director's request for evidence fell significantly short of establishing that the training to be provided is not available in Israel. With respect to the Internet forum discussion submitted, the AAO notes that the topic of the discussion was whether Israel has a newspaper or magazine that deals with HD audio technology, not whether training in the field of audio technology is available in Israel. The response was that Israelis prefer to get information from the Internet. This evidence is not probative as it does not related to the availability or unavailability of training the beneficiary's field in Israel.

The e-mail correspondence from Ben Gurion University is similarly unpersuasive. The beneficiary specifically asked a single department of a single university if they offer "paid training" in audio editing and recording in HDTV systems. It is unclear that any educational institution would provide students with paid training in any field. Regardless, the fact that this particular university's media department does not offer the same training is not evidence that the training is unavailable anywhere in Israel. The university employee referred the beneficiary to a different department, and there is no evidence that he contacted that department.

In addition as noted by the director, the petitioner contended that although the beneficiary would be trained "to assimilate himself with [the petitioner's] audio technology," the petitioner provided no evidence to demonstrate how the proposed training is specific to its own business operations. 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 beneficiary's resume shows that he completed one year of post high-school education at the Yoav Gera "Sound School" in Israel, where he studied sound, amplification and recording engineering/audio technology. The school offers a two-year degree in sound engineering with topics covering many of the same areas the beneficiary will be studying in the United States. Clearly, it is possible to be trained as a professional audio technician in Israel. While the petitioner implies that the training available in Israel does not prepare a student to work with HD equipment, the AAO finds insufficient evidence to support this claim. Further, there is little mention of the petitioner's training plan of HD technologies versus standard definition technologies or the differences between them, such that the AAO could conclude that the skills to be imparted are particularly specialized. The petitioner's training materials include general sound engineering titles and operating manuals for equipment manufactured by major electronics companies whose products are sold worldwide.

The AAO notes that the question to be addressed when attempting to satisfy the regulations at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5) is not whether similar training would take longer in the beneficiary's home country, or whether such training would be inferior to that available in the United States. Whether similar training in the beneficiary's home country would take longer to complete or would be inferior is not material; 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 fact that a training program offered by a United States employer is superior compared to a similar program in a foreign country does not establish eligibility under this regulation.

The letters submitted by the petitioner on appeal suggest that the type of training to be provided is superior in the United States, and allows the trainee the experience to participate in larger scale events. The AAO does not doubt that HD technologies are more widespread in the United States. However, the evidence of record indicates that such technologies do exist in Israel, and shows that there are technicians working in the field in Israel. The AAO is not persuaded that all HD audio technicians in Israel have been trained in the United States or elsewhere. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Moreover the petitioner specifically instructed the petitioner to submit affidavits or declarations from recognized authorities and advised that such opinions must state: the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used. The letters submitted do not meet these standards.

The petitioner has failed to demonstrate that the proposed training could not be obtained in the beneficiaries' home country. It has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) or 214.2(h)(7)(ii)(B)(5). Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a petition on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

According to the evidence of record, the beneficiary completed the first year of a two-year course in audio technology at a school exclusively dedicated to training sound engineers. He worked for over two years on a full-time basis as an assistant sound technician for Starter Music Ltd. in Israel, where he was responsible for installation, maintenance, repair and operation of sound systems. He completed approximately two years of training with the petitioner as a video technician working with HDTV equipment and "learning to install, adjust, and operate electronic equipment used to transmit television programs, cable programs, test screenings for motion pictures," and is thus already familiar with the petitioner's equipment and business operations.

Based on the beneficiary's experience with the petitioner, it appears that many aspects of the proposed training have already been provided to him. For example, the initial three months of training in "general administration" would appear to be redundant. The petitioner indicates that during this time, the beneficiary would be responsible for learning what each person in the company does, the equipment the company uses, getting to feel comfortable with other technicians, and learning general electrical safety skills. It is reasonable to assume that the beneficiary is already familiar with the petitioner's employees and their roles within the company. The beneficiary has also been exposed to coordination and planning for events and client contacts.

As of the date of filing, the beneficiary had been studying, working and training in the audio-visual technology field for at least four years. The AAO is not persuaded that he requires an additional 18 to 20 months of training in the field, or that the training he would receive would significantly add to his expertise.

Although the petitioner claims that the beneficiary's period of training in J-1 status was strictly in video technology and the H-3 training will be in audio technology, the AAO notes that the petitioner does not appear to make such distinctions among its own staff. The petitioner's has four employees simply designated as "technicians," not as audio or video technicians. The only new equipment the petitioner claims the beneficiary will be trained on are six different "video players" that "play both video and audio," and the AAO is not convinced that the beneficiary would not have been exposed to working with such video and audio recording equipment during his training as a video technician. Furthermore, given that the beneficiary had already completed one year of study and two years of work experience in the audio technology field when he came to the United States in J-1 status, the AAO is not persuaded that he obtained no further experience in this field while immersed in training with a company specializing in audio and video technology.

A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965). The question is whether the beneficiary already possesses substantial training and expertise in the proposed field of training, not whether he possesses training and expertise regarding the petitioner's company. Here, the record establishes that the beneficiary has substantial training and expertise in the field. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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.