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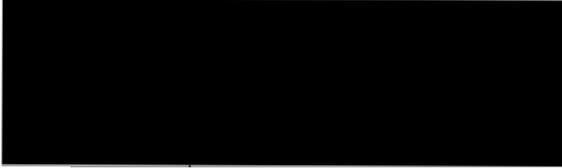
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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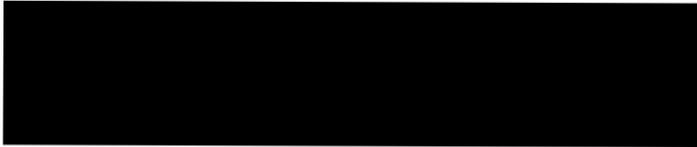
FILE: WAC 08 800 07097 Office: CALIFORNIA SERVICE CENTER Date: MAY 06 2009

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.

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 sustained. The petition will be approved.

The petitioner is a recreation resort that seeks to employ four beneficiaries as trainees for a period of two years.¹ The petitioner, therefore, endeavors to classify the beneficiaries as nonimmigrant worker trainees 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 two grounds: (1) that the petitioner had failed to demonstrate that the proposed training cannot be obtained in the beneficiaries' home countries; and, (2) that the petitioner had failed to establish that the proposed training program does 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.

¹ The Form I-129 indicates that the petitioner seeks to employ five individuals as trainees; however, on appeal, the petitioner requested to withdraw [REDACTED] from the petition.

- (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 petitioner provided extensive information regarding its proposed training program. According to the petitioner, the proposed training program would consist of 4,160 hours of training over a twenty-four month period, including approximately 1,300 hours (31% of the total training time) devoted to intensive classroom instruction:

Course work will focus on the introduction and mastery of theoretical principles. Seminar training will focus on problem-based applications of theoretical principles and evaluation of procedures learning during daytime rotations. Trainees are also required to have regular one-on-one instruction sessions with Training Supervisors designated in each segment of training.

The petitioner emphasized that the trainee would not displace a U.S. worker in the period of training nor in any period subsequent to the training period. The petitioner stated that the purpose of the training is not to prepare the trainee for a position in the United States, but to provide specifically tailored training to prepare the trainee to serve as an overseas agent for the petitioner.

In response to the director's request for evidence, the petitioner explained why it is offering the training program to the beneficiaries as follows:

Because the Trainees display remarkable potential to become resort managers, they have been provided the opportunity to receive advanced training with our organization. They seek to further their careers in the resort industry by completing our training program. Once they return overseas, they will serve as key contacts for our organization, to help us expand our international reputation as a premier resort operation, so that we may expand this area of our business by attracting new international clients to our established (and growing) facilities in Aspen, Colorado and other parts of the Mountain West, and so that we may lay the groundwork for our expansion activities abroad. Accordingly, when they initially return to their respective countries, we will hire them to serve as our marketing agents, expecting them to meet with potential partners abroad and to lay the ground work for established the Little Nell at key resort locations.

The director found that the petitioner had failed to establish that the proposed training could not be obtained in the beneficiaries' home country. Upon review, the petitioner has overcome the director's conclusion. 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 beneficiaries' own countries, 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 aliens' home countries and why it is necessary for the aliens to be trained in the United States.

The director raised this issue in her request for additional evidence. In its response, the petitioner stated the "training is unavailable in the Trainee's home locations of Europe and Argentina, because our organization has not established a training program abroad, and because the opportunity to train with our organization and learn about our specific style of operations is only available 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. 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, the primary reason for creation of the training program is to train the beneficiaries' on the petitioner's particular business practices. 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 resort facility. The documentation submitted by the petitioner also indicated that the petitioner has received several prestigious awards for its first-rate facilities and dining, and ranking as a top destination in the world from travel magazines such as *Travel and Leisure* and *Conde Nast Traveler*. The petitioner has established that the beneficiaries will be trained to manage and market a unique, first-class resort. The AAO finds that, in this particular case, the petitioner has established that the proposed training is not available in the beneficiaries' home countries, 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.

The director found that the petitioner had failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A). The director's finding is not supported by the record. The petitioner has submitted detailed information regarding the training program and the AAO finds the petitioner's explanations and submissions reasonable. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A), and the AAO withdraws the director's findings to the contrary.

For all of these reasons, the petitioner has overcome the grounds of the director's denial, and the director's decision is withdrawn.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.