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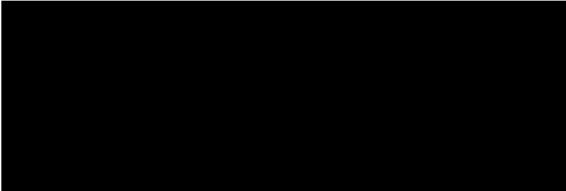
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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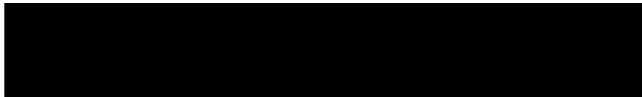
D4



FILE: EAC 09 073 51421 Office: VERMONT SERVICE CENTER

Date: **APR 06 2010**

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

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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 engaged in “management, consulting, operations, development” for retail, and it seeks to employ the beneficiary as a trainee for retail management services for a period of 24 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 (RFE); (3) the petitioner’s response to the director’s RFE; (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.

On April 7, 2009, the director denied the petition on the grounds that the petitioner failed to establish that the proposed training is unavailable in the beneficiary’s home country, and the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. 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 letter of support, the petitioner explained the training program as follows:

Our training program is unique as it incorporates principles of Lean Retail Management (LRM). This management technique manages in totality. For example, in India profitability is viewed separately from maintaining high quality of service. It is considered simply a matter of cost savings and/or increasing margin. They do not consider totality. Lean Retail Management is a broad-based system that requires considering the totality of the managing business and not just retail products being offered.

The petitioner also explained that the purpose for the training program is to “expand our company’s reach beyond the United States market.” The petitioner submitted an outline of the training program which is broken down into the following phases: Orientation (1 week); Individual Computer Management Skills (3 months); Lean Retail Management Skills (4 months); Inventory Management: Purchasing and Sales Department (4 months); Management Skills Administration Department (6 months); Retail Culture and Sales Management (3 months); Retail Planograms (3 months); and, Wrap-up Administration Department (3 weeks). The petitioner stated that the training program will consist of classroom instruction for 75% of the time, and on-the-job training for 25% of the time.

The petitioner submitted a contract between itself and a company located in India, IKB. The contract states that the petitioner will perform Lean Retail Management training for individuals sent by IKB. In addition, the petitioner submitted a letter from IKB, dated January 6, 2009, stating that it will hire the beneficiary as a Retail Management Analyst upon completion of the training program.

The petitioner also submitted a letter from [REDACTED] and Commerce College, certifying that “there is no training available in India for Retail Management Analyst.”

On appeal, the petitioner asserts that “lean management techniques were developed, refined, implemented and restructured over the years in United States only.”

On April 7, 2009, the director denied the petition on the ground that the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country.

Upon review, the petitioner has not overcome 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 concluded that the petitioner failed to establish that the proposed training could not be obtained in India, 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.

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. In other words, 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.

The petitioner stated on appeal that the lean management technique looks at "management in totality" and in India they "do not consider totality." The petitioner also explained that at the conclusion of the training, the beneficiary will work for IKB, a company located in India, as a Retail Management Analyst. The petitioner did not submit sufficient corroborating evidence to support the claim that the trainee cannot find training in lean retail management strategies in India. It appears that the training program will focus on business strategies such as finance, merchandise, marketing, sales, customer service, human resources, and international business, all business concepts that are taught outside of the U.S. The petitioner claims that lean retail management is not practiced in India; however, it did not provide sufficient evidence to establish this claim. In addition, if lean retail management is in fact not practiced in India, the petitioner did not explain why an Indian company is sending individuals to the U.S. to receive such training. 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)).

On appeal, the petitioner submitted a support letter from [REDACTED] Arts and Commerce College. The author stated in the letter that "there is no training available in India for Retail Management Analyst." The author did not provide evidence to establish that training that links theory to practice is not found in India. The author did not explain how the training in India differs from the U.S. as further evidence that the training with the petitioner cannot be found in India. In reviewing the opinion letter, the AAO finds that an adequate factual

foundation to support these opinions has not been established. The author does not clearly indicate the company information they relied on to write the letter, whether they visited the petitioner's site, or interviewed anyone affiliated with the petitioner. Nor does it describe the training program in any meaningful fashion. The extent of their knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of their pronouncements and these submissions are therefore not probative of any of the criteria at issue here. Nor has the author submitted any industry data or other information to support this opinion. The petitioner does not provide supporting evidence. Thus, the petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies in India. In addition, the author did not submit information as to how he qualifies as an expert opinion.¹ The petitioner has failed to demonstrate that the proposed training could not be obtained in the beneficiary's 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).

The second issue to be addressed is whether the petitioner fails to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) precludes approval of a training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

The director noted that the beneficiary's resume shows "experience working in a closely related field for approximately eight years." In reviewing the beneficiary's resume, he was employed as an administrative assistant from 2003 to present, and an Administrative Clerk from 2001 to 2003. It does not appear that the beneficiary has the experience in lean retail management as he always filled non-managerial positions. The petitioner thereby sufficiently distinguished the beneficiary's prior work experience from the training in the H-3 program provided by the petitioner. The AAO, therefore, withdraws this portion of the director's decision.

Beyond the decision of the director, the petitioner fails to demonstrate that it has an established training program and fails to submit evidence that the training program does not deal with 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 where the petitioner submits a training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

The petitioner has not established that its training program does not deal in generalities. 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 24-month training program but the petitioner's outline of the program provides a few sentences to

¹ 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).

explain the topics that will be studied during each phase of the program. Based on this vague, generalized description of the training program, it cannot be determined what the beneficiary would actually be doing on a day-to-day basis.

Nor has the petitioner explained how the different phases would be divided among the portions of the training program devoted to classroom training, written and oral presentation, and practical training. Although the petitioner indicated on appeal that the training program will consist of 75% classroom training and 25% on-the-job training, it did not provide any explanation of how the material will be taught or of what the on-the-job training will consist. 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. Again, 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).

In addition, the petitioner did not provide a complete explanation of how the beneficiary will be evaluated throughout the training program. It is not clear on what the beneficiary will be tested, as the training program outline only provides a general explanation of topics to be discussed but does not provide a syllabus that will be followed, information on how the material will be taught, information on the assignments that will be assigned to the beneficiaries or materials that the beneficiaries will use in order to learn the topics to be discussed.

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 AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition, except to add the additional basis for denial discussed herein.

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.