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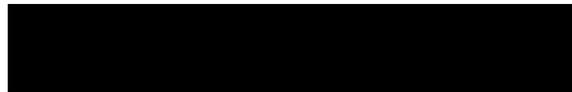
**U.S. Citizenship
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Services**



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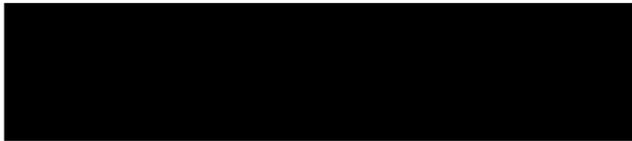
FILE: WAC 08 241 51720 Office: CALIFORNIA SERVICE CENTER Date: APR 06 2010

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:



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).

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 an “importer and distributor of ready to wear clothing” that seeks to employ the beneficiary as a trainee for a period of eighteen 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 (RFE); (3) the petitioner’s response to the director’s RFE; (4) the director’s denial letter; and, (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On February 4, 2009, the director denied the petition on multiple grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary’s home country; (2) the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad; (3) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and, (4) the petitioner failed to demonstrate that it has sufficiently trained manpower to provide the training specified. 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, dated August 27, 2008, the petitioner stated that “our company recognizes the opportunity to develop a niche market in the Philippines focused on outsourcing, and we want to entrust [the beneficiary] with the responsibility of establishing an overseas office to exploit this business opportunity.” The training program will provide the beneficiary with “expertise in all aspects of [the petitioner’s] import and export strategies and merchandise distribution as well as industry knowledge of clothing manufacturing in order to prepare for [his] overseas assignment.” The petitioner also stated that the training program will last 18 months and the trainee will receive approximately 70% classroom training, 20% supervised practical training, and 10% incidental productive employment.

The petitioner also explained that the training is unavailable in the beneficiary’s home country for the following reasons:

Our company-specific methods include floor ready requirements, reduced packaging, advance ship notices, standard case pack quantities and the use of EDI. Our focus has been on increasing the speed at which product moves through supply pipeline. Furthermore, [the petitioner’s] belief in providing quality service and tight-knit company culture makes it necessary for our overseas management to become familiar with our operations at our U.S. office. However, in addition to learning to work with [the petitioner’s] U.S. team, we will provide a comprehensive training program in the fields of strategic marketing and distribution management for our industry. The knowledge and experience gained will be applicable to many other positions and industries even across different countries. Our goal is to provide training for [the beneficiary] so [he] can apply the knowledge and skills gained in establishing our Philippine branch office. The infrastructure and expertise that enable us to maintain our current success is located at our headquarters located in Los Angeles, California; therefore, industry-specific instruction in conjunction with practical training that is exclusive and unique to the petitioner is not presently available in Asia or elsewhere.

In addition, the petitioner submitted the training program for “Import and Export Specialist Training.” The program stated that the goal of the program is to “educate Import and Export Specialist trainee in all areas of [the petitioner].” The program also states that the program will be taught by “industry professionals.” In addition, the trainee’s performance will be evaluated

by oral and written examinations, work samples, testing, attendance and active participation. The training program will consist of the following modules: (1) Long-term goals and plans; (2) Organizational Structure; (3) Corporate policies; (4) Industry Background; and (5) Facility.

In response to the director's request for evidence, the petitioner submitted a list of courses available in three universities in the Philippines that "do not have any course that has to do with Import and Export." The petitioner also stated in its response letter that it submitted a letter from a certified trainer in the Philippines stating that in her more than 30 years of being a certified trainer, she has not conducted a similar training; however, this letter was never sent to the director. The petitioner re-submitted the initial training program and documentation of the business operations.

Upon review, 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 failed to establish that the proposed training could not be obtained in the Philippines, 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.

In response to the director's request for evidence, the petitioner submitted a list of courses offered by three universities in the Philippines and stated that the schools "do not have any course that has to do with Import and Export." Although the course listings do not specifically state a course on Import and Export, there is no information that the courses to obtain a degree in business administration or economics, for example, do not teach import and export operations. Moreover, a University's course listings detailing its educational coursework is not wholly relevant or is at least an incomplete picture of the existence or non-existence of training programs that exist in a particular country. 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)).

In reviewing the training program, the description of the courses are vague and general in nature. It appears that the trainee will learn general concepts of the import and export business. The petitioner has not submitted any industry data or other information in support of the assertion

that the training program must occur in the United States. 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 the beneficiary's home country. Therefore, 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 director also found that the petitioner did not establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States. 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 the claimed purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner. As the petitioner has no operations in the Philippines, there exists no setting in which he would be able to utilize his newfound knowledge. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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 allegedly specific to the petitioner, and the only setting in which the beneficiary would utilize his 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. In the letter of support, dated August 27, 2008, the petitioner stated that after completion of the training program, the beneficiary will be employed as an Import and Export Specialist at "our Philippine branch office." The petitioner did not submit any corroborating evidence to establish that it has a branch office or will open one soon, such as a lease agreement, a business plan, financial records or stock certificates. The evidence is not sufficient to establish that the petitioner will have an office abroad to employ the beneficiary upon completion of the training program. Again, 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 at 165. For this additional reason, the petition may not be approved.

The director also found that the petitioner failed 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 an eighteen-month training program that is divided into five modules. Although the petitioner

submitted a training outline with topics to be discussed in each module, much of the training is general to all business operations and not specific to the petitioner's business activities. The outline consists of general topics that would be taught in any business course. In addition, 20% of the claimed training is on-the-job training, but the petitioner does not explain what that will entail. Also, 70 percent of the training will allegedly consist of classroom training by "industry professionals," but the petitioner never explained whom, in fact, are the trainers. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis. 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. As such, it has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

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

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified.

The Form I-129 submitted by the petitioner indicated that it currently employs seven individuals. One of these employees is the petitioner's president who, according to the petitioner's letter of support, would supervise the beneficiary at all times. The petitioner also stated that industry professionals will assist in the training program but the petitioner failed to provide any evidence of the trainers. Thus, it is not clear how the president, and six employees of the company, can take over the duties of trainer for 18 months and still perform the regular operations of the business. The record of proceeding, as currently constituted, does not adequately explain who will perform the trainer's normal workload while he/she is instructing the beneficiary during the classroom training (70% of the program) and supervised practical training (20% of the program). The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner failed to demonstrate that 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(2) requires a demonstration that 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The AAO hereby incorporates its previous discussion regarding the vague and generalized description of the training program contained in the record, particularly regarding the rotational assignment portions of the training. Without additional information regarding what the beneficiary will actually be doing while he is studying each phase of the program, the evidence is insufficient to establish that the beneficiary will not in fact be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, and that he will engage in productive employment beyond that incidental and necessary to the training. As such, the petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(ii)(2), 214.2(h)(7)(ii)(A)(ii)(3), or 214.2(h)(7)(iii)(E).

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 enter the additional basis for denial, *supra*.

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.