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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

D4

FILE: WAC 08 182 51051 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).

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 a medical office that seeks to employ the beneficiary as a medical office and electronic medical records management trainee for a period of one year and four 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 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.

The director denied the petition on the following grounds: (1) the petitioner failed to demonstrate that it has sufficiently trained manpower to provide the training specified; (2) the petitioner failed to demonstrate that it has an established training program and that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (3) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country.

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 a letter, dated May 12, 2008, the petitioner explained the purpose of the training program as follows:

The trainee will be engaged in the medical office management and electronic medical records management training program in providing medical management and records keeping in the medical industry with an exhaustive evaluation. The goal of the training is to prepare the trainee for placement abroad in the future affiliate office of the company with responsibilities including management and marketing of medical services. The training is designed to prepare trainee for positions in the medical field, combining knowledge of automated medical office and patient contact. This program is designed to teach the trainee to work closely with doctors to organize and monitor patient care services. In addition, this program will focus on medical terminology, medical office procedures and insurance billing.

The petitioner also stated that the training program will consist of (1) 80 percent academic training, in-class instructions, and discussions; and (2) 20 percent supervised practical training. In addition, the petitioner explained that this type of training is not available in the beneficiary's home country for the following reasons:

Medical office and electronic medical records management expert training is not available in the Philippines as the training will first be focused on the U.S. medical field, its business environment and the sophisticated medical industry. Also, the infrastructure and expertise that enable the petitioner to conduct the training effectively are all located in its U.S. office. The trainee needs to have hands on expertise knowledge and experience [in] the field and in the day-to-day operations of the business.

The petitioner submitted a training program outline. The outline states that the beneficiary will receive evaluations and tests throughout the training program. The outline also states that [REDACTED] "will oversee the training and supervise the trainee." The training will consist of

the following parts: (1) Medical Office Management (8 months); (2) The Medical Office Manager (88 days); and (3) Electronic Medical Records (88 days).

The petitioner submitted an organizational chart which indicates five employees: a doctor of medicine/president, an administrative secretary, two physician assistants, and a medical assistant.

On November 5, 2008, the director sent a request for additional information.

In response, the petitioner submitted an agreement between the petitioner and Telecomlink Inc., dated May 19, 2008. Counsel for the petitioner stated that [REDACTED] is a "total call center service provider based in the Philippines that provides outsourcing services to U.S. clients." The partnership agreement is to open a business in a "healthcare setting" which will start after the H-3 training is completed.

The petitioner also submitted several letters from Universities and companies located in the Philippines which all state that courses or training in medical office management and electronic medical record management is not offered in the Philippines.

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 petitioner submitted an organizational chart which indicates five employees: a doctor of medicine/president, an administrative secretary, two physician assistants, and a medical assistant. The training program states that the doctor of medicine/president, [REDACTED] will provide the training. In response to the director's request for evidence, the petitioner submitted a revised organizational chart showing each of the employee's duties should the H-3 visa be approved. The revised chart shows a training department headed by [REDACTED] and, the chart states that the physician assistant, [REDACTED] will take over the duties of the trainer, [REDACTED] when he is training the trainee. On appeal, the petitioner changed the information and said that both the doctor and physician assistant will train the trainee.

The director states in its decision that the two organizational charts submitted by the petitioner were inconsistent. The petitioner explained that the revised chart submitted with the response to the director's request for evidence included the training department and the trainee only if the H-3 visa is approved.

The record of proceeding, as currently constituted, does not adequately explain who will perform the workload of the doctor/president while he is instructing the beneficiary for a period of 16 months. Although the petitioner claims that the physician assistant will take over the duties of the doctor and president while he is training the beneficiary, that does not explain how a physician assistant can perform the duties of a licensed doctor. A physician assistant does not have the degree or license to perform medical duties that are performed by the doctor. Thus, it does not explain how a solo practitioner's office can still function if that one doctor is training for 16 months. The doctor's office will not survive without its one doctor. The petitioner's

claim that the physician assistant will take over the doctor's duties when he is training the beneficiary is not sufficient evidence of sufficient manpower to perform the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) therefore precludes approval of this petition. For this reason, the petition may not be approved.

The director found that the petitioner failed to establish that the proposed training program does not deal in 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 that deals in generalities with no fixed schedule, objectives, or means of evaluation.

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 16 month training program, but the petitioner's outline of the program only consists of general outlines and business concepts, such that it is not clear what the beneficiary will be doing each day. Although the director requested a more detailed outline of the training program, the petitioner did not provide any additional documentation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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, such as generalized concepts of marketing, management, sales, accounting and human resources, and it is not specific to the petitioner's business activities. In addition, 20 percent of the training is on-the-job training but the petitioner does not explain what that will entail. Also, as noted above, 80 percent of the training will consist of classroom training by the one medical doctor/president of the company, and it is not clear how he can run the medical practice as the sole doctor while also providing at least 80 percent of the beneficiary's training. 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.

In addition, the petitioner did not provide a list of materials that would be utilized during the training program. The petitioner stated in the training outline that the beneficiary will be evaluated on a monthly basis; however, it did not provide any information on how the trainee will be tested and evaluated. 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. As such, it has failed to establish that its proposed training program does not deal in generalities. For the reasons discussed above, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

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 director also concluded 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.

On appeal, counsel for the petitioner states that such training is not available in the Philippines, since that society has not yet developed the training standards and frameworks as they exist in the United States. The petitioner, however, did not submit sufficient corroborating evidence to support the claim that the trainee cannot find training in medical office management and medical records management in the Philippines, even if it is not the exact standard and process found in the United States. 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 submitted several certification letters from schools and companies located in the Philippines that state that training in medical office management and medical records management is not found in the Philippines. In reviewing the letters, an adequate factual foundation to support these opinions has not been established. The authors do not note the location of the petitioner, nor indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor do they 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 this evidence is therefore not probative of any of the criteria at issue here. Nor have the authors submitted any industry data or other information to support any of their opinions. In addition, the Philippines has medical offices, clinics, and hospitals and, thus, it is not realistic that the beneficiary cannot receive medical office management training in his home country. 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. 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 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).

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.