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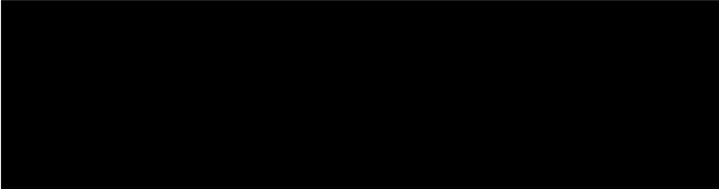
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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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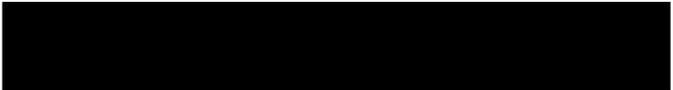
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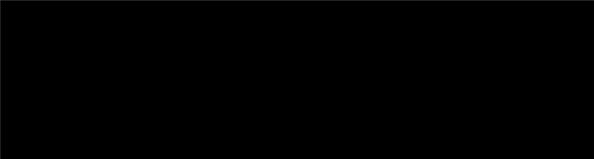
APR 13 2010

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 a retail chain that seeks to employ the beneficiaries as trainees for a period of 14 months. 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 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 April 13, 2009, the director denied the petition on three grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiaries' home country; (2) the petitioner failed to establish that the proposed training program would benefit the beneficiaries in pursuing a career abroad; and, (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.

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 January 27, 2009, the petitioner explained that it is “one of the nation’s largest American retail cart operator,” and it wishes to train the beneficiaries in “retail management through an established U.S. based training program.” The petitioner also stated that upon completion of the training program, the trainees will return to Israel to be placed in a “related position” by the petitioner. The petitioner described the training program as follows:

The training program is designed to teach retail management, sales and marketing techniques that have been developed and utilized by some of the most successful retailers in the U.S. The trainees will attend lectures, engage in intensive studies and review written material prepared by [the petitioner’s] management personnel. The program also includes instruction by personnel of related companies. All aspects of the training program will be supervised by experts and specialists in each specific area.

The petitioner further stated that the training program will consist of the following ten parts: English Language Immersion Program (2 weeks); Orientation and General Business Instruction (1 week); Introduction to Retail Marketing (4 weeks); The Retail Experience (12 weeks); Customer Relationship Management (12 weeks); Loss Prevention (6 weeks); Supply Chain Management (6 weeks); Emotional Intelligence in Sales and Marketing (12 weeks); Regional studies at work sites (4 weeks); and, Final Reports and Training Program Conclusion (1 week).

In a response to the director’s request for evidence, dated March 27, 2009, counsel for the petitioner explained that the lead trainer will be the petitioner’s president. In addition, counsel named four other individuals who will assist with the training program but did not explain their role within the company. Counsel also explained that the purpose of the training program is to provide “U.S. based retail training” that is not available in Israel, and is a critical factor for employing individuals in Israel.

The petitioner also submitted a letter from Overseas Training Services, an Israeli company that specializes in job placement in Israel and Europe. The author of the letter, the director, stated that Overseas Training Services has “been working extensively with [the petitioner] to assist this U.S. company in setting up operations in Israel and the surrounding region.” In addition, the author stated that the “most successful retailers here are managed by Israelis with U.S.-based training, and in order to place retail employees, my clients generally *require* such training.”

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 Israel, the beneficiaries' 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 beneficiaries' home country is not the issue; the question is whether the training is unavailable anywhere in the beneficiaries' home country, irrespective of whether it would be provided by the petitioner or another entity.

As noted in the petitioner's support letter, the goal of the training program is to provide the trainees with a "U.S.-style management, marketing and sales techniques." This is further emphasized by the letter from Overseas Training Services whereby the author stated that the "most successful retailers here are managed by Israelis with U.S.-based training, and in order to place retail employees, my clients generally *require* such training." However, the petitioner did not present any corroborating evidence to establish that the "U.S.-style retail marketing and sales practices" are different from those found in Israeli retail marketing and sales. Furthermore, even if the "U.S.-style retail marketing and sales" is different from that found in Israel, the petitioner did not provide evidence that this type of retail management training cannot be found in a store or company located in Israel. Israel has several American-based companies, and as noted by the letter from Overseas Training Service, "most successful retailers here are managed by Israelis with U.S.-based training." Therefore, it is not clear why the trainees cannot receive the retail management training provided by the petitioner in Israel. 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)).

Moreover, in reviewing the training program, the description of the courses is vague and general in nature. It appears that the trainees will learn general concepts of sales and marketing that may be taught in any business school. The petitioner has not submitted any industry data or other information to support that the training program must occur in the United States. It is not clear why the beneficiaries can not learn about basic sales and marketing techniques at a store or company in Israel. Thus, the petitioner has not established that the topics to be studied in the training program cannot be found in Israel. In addition, the petitioner did not establish 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 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).

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 purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiaries' would be able to utilize their newfound knowledge would be for the petitioner. As the petitioner has no operations in Israel, there exists no setting in which the trainees would be able to utilize their newfound knowledge. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). The petitioner submitted a letter from Overseas Training Services, an Israeli company that specializes in job placement in Israel and Europe. The letter stated that Overseas Training Services has "been working extensively with [the petitioner] to assist this U.S. company in setting up operations in Israel and the surrounding region." However, the petitioner did not submit a contract between itself and Overseas Training Services to identify how Overseas Training Services is assisting the petitioner. In addition, the petitioner did not submit additional corroborating evidence of establishing an office abroad such as a lease agreement, a business plan, financial records or stock certificates. The petitioner submitted evidence that the president has visited Israel often but this is not sufficient evidence to establish that the petitioner is opening a branch in Israel.

On appeal, the petitioner states that it has managed a deal with a shopping mall in Australia to open a location, and that the trainees will be employed in Australia upon completion of the training program. The petitioner stated that it created an affiliate in Australia, [REDACTED] which is opening its first store in June 2009. However, the lease is only for eight months, thus the retail store may be closed before the training program is completed. Therefore, it is not clear if the trainees will be employed in Australia after the training program ends. Thus, the evidence is not sufficient to establish that the petitioner will have an office abroad to employ the beneficiaries 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 beneficiaries would actually be doing on a day-to-day basis. The program is a 14 month training program that is divided into ten parts. 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 course of sales and marketing. In addition, each part of the training program is explained in a few sentences without much detail of what the trainees will be learning during the classroom instruction and the on-the-job training. The vague, generalized description of the training program does not explain what the beneficiaries would actually be doing on a day-to-day basis. The petitioner is not required to provide an exhaustive account of how the beneficiaries will 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 beneficiaries 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 clear explanation of how the beneficiaries will be evaluated throughout the training program. The petitioner stated that the beneficiaries will take exams but it is not clear on what the beneficiaries 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 beneficiaries, or materials that the beneficiaries will use in order to learn the topics to be discussed.

Beyond the decision of the director, the petitioner failed to establish that the beneficiaries do 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.

As noted by the director, seven of the eight trainees were working with the petitioner in H-2B status prior to filing the instant petition. In a response letter, dated March 27, 2009, counsel for the petitioner stated that the beneficiaries have virtually no relevant experience even though most of them had been employed by the petitioner as an H-2B worker. Counsel contends that the beneficiaries who held H-2B status were serving as retail salespeople which is a "relatively unskilled position which requires extremely limited training." Counsel further stated that the training program will provide knowledge to the trainees to serve in a managerial capacity for the petitioner. The petitioner did not provide sufficient explanation of the responsibilities held by the employees in H-2B status and how that experience will differ from the training provided on retail sales and marketing.

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.

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.