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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: EAC 09 054 50082 Office: VERMONT SERVICE CENTER Date: APR 14 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 horse farm that seeks to employ the beneficiary as a trainee for two years. 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 January 22, 2009, the director denied the petition on the ground that the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. The director noted that the petitioner's "public information web site suggested that the beneficiary already possesses the expertise and knowledge that would be afforded from the stated H-3 training program."

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 Section 4 of the H Classification Supplement to Form I-129, the petitioner answered the following regarding whether the beneficiary already has skills related to the training:

Out Training Program includes some of the most advanced principles of show horse training, including training for riders as competitors at the national and international levels. Thus, we require that Trainees possess general equine skills to ensure that they can successfully progress in our fast-paced Training Program. The Trainees, however, lack training and experience in advanced American techniques and in our organization's particular practices. They will gain substantial additional knowledge and expertise pertaining to the standards of the United States, and most importantly, they will acquire significant understanding and ability in the context of our organization's unique training philosophies.

In a letter dated November 21, 2008, the petitioner explained the goal of the training program as follows:

The IEM training Program is intended to provide trainees with a thorough knowledge of and experience with the particular standards and practices that are employed in the U.S. by [the petitioner], including anatomy and physiology; reproduction; psychology and behavior; nutrition and metabolism; infectious diseases of the horse; pharmacology and emergency care; conformation and locomotion; complementary medicine; farm agronomics; equine business management, and advanced equine hoof anatomy and physiology. Upon completion of the IEM Training Program, the trainees are expected to be fully qualified to manage and/or expand [the petitioner's] international operations following the standards and practices established by [the petitioner] in all of the above-mentioned areas. The IEM Training graduates will also be expected to be capable of analyzing, reviewing and advising on critical management issues such as bloodstock purchases and contracts, as well as marketing [the petitioner's] bloodstock and/or other horse-related services to clients or agents in Europe and elsewhere abroad.

On December 24, 2008, the director requested further detail on the petitioner's H-3 training program. The director also noted that the beneficiary was in J-1 status with the petitioner and the director requested additional information on how the J-1 program differed from the H-3 training program. The director noted that the beneficiary completed a J-1 program with the petitioner that appears to be the same training that will be provided in the H-3 program.

In response, the petitioner explained that the J-1 program focused on the basics of the horse industry, as compared to the H-3 program that will focus on the advanced concepts of the industry. The petitioner specifically stated the following:

The J-1 training program at [the petitioner] seeks to provide general training with regard to horses and the horse industry. Along with these goals, the program seeks to provide the trainee with the opportunity to experience American culture and to travel to different parts of the country for horse competitions. The long-term objective of the training program is to enable the trainee to return to his home country and to get involved, in some capacity, in the equestrian industry.

By contrast, [the petitioner's] H-3 training program seeks to inculcate, over a rigorous two-year period, an in-depth education in the most advanced principles of equine science and management and to immerse the trainee in the business operations and methodologies specific to [the petitioner]. The objective of the program is to prepare the trainee to uphold [the petitioner's] reputation when he returns abroad to work as an agent for [the petitioner].

The petitioner also submitted an outline of the 12 month training plan for the J-1 visa and lists the skills the trainee will receive as follows: Basic horsemanship; safety rules and farm operation; nutrition; training of young and advanced horses; showing of horses for competitions; show management and public relations; and practical farm management.

The petitioner also submitted a copy of the beneficiary's resume. According to the beneficiary's resume, his educational experience includes two years of training as a stable hand for breeding and grooming, and one year of experience as a horse trainer at a horse breeding center. In addition, the beneficiary completed five years of work experience as a horse handler. In addition, the beneficiary completed one year of horse training with the petitioner while he was in the United States on a J-1 visa.

In the director's decision, she noted that the petitioner's "public information web site suggested that the beneficiary already possesses the expertise and knowledge that would be afforded from the stated H-3 training program." On appeal, the petitioner submits an affidavit from [REDACTED], the petitioner's office assistant, stating that she was solely responsible for the petitioner's website content and she "embellished [the beneficiary's] qualifications and position at [the petitioner] on [the petitioner's] website to boost his credentials, in order to help with the marketing of the company." In addition, the petitioner submits an affidavit from its owner stating that he had no knowledge of the content of the petitioner's website.

Upon review, the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

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 above, the petitioner stated that the beneficiary received general training of horses and the horse industry, while the H-3 training will train more advanced concepts of the industry. However, in reviewing the program outlines of the J-1 program and the H-3 program, it appears that several topics overlap in the two training programs. For example, both programs train on horse nutrition, horse handling, administration of drugs, treatments for horse diseases, and riding techniques. The petitioner's brief explanation of the difference between the J-1 program and the H-3 program does not sufficiently distinguish the J-1 program from the H-3 program provided by the petitioner.

In addition, in reviewing the beneficiary's resume, he has over three years of educational experience as a horse trainer and over six years of work experience as a horse handler, including one year in a J-1 visa for the petitioner learning the specific techniques and operations practiced by the petitioner. The petitioner did not sufficiently explain how the H-3 training program will differ from the beneficiary's previous experience including three years of education and six years of work experience in the horse industry. 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)). Thus, for this reason the petitioner may not be approved.

Beyond the decision of the director, 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 beneficiary would be able to utilize his newfound knowledge would be for the petitioner. The petitioner stated that it has a sales office in Germany where the beneficiary will be hired if he successfully completes the training program. The Germany office is listed as a contact in the petitioner's website, however, the petitioner did not provide any information about this office. The petitioner did not submit any corroborating evidence to establish that the office in Germany is a branch office of the petitioner, such as 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.

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.

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.