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

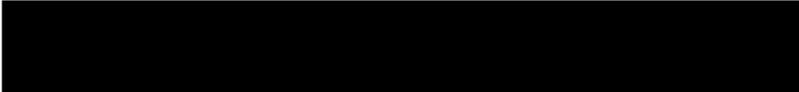


**U.S. Citizenship  
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Services**

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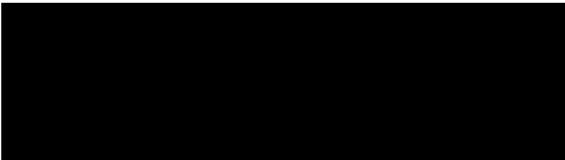
FILE: WAC 08 222 51922 Office: CALIFORNIA SERVICE CENTER Date: **APR 14 2010**

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).

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 travel and tourism. It seeks to employ the beneficiaries as trainees for a period of 18 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 denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On January 28, 2009, the director denied the petition on two grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiaries' home country; and (2) 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 July 28, 2008, the petitioner explained that it is a “specialized travel and tourism agency catering to the needs of Japanese corporate clients and individual clients.” The petitioner also explained that it is operated by World Joint Corporation, and it has established offices in the United States and abroad, and employs a professional staff of 150 employees. The petitioner further stated that the goal of the program is to “provide prospective Travel Reservation Specialists & Coordinators from Japan with knowledge and skills in the U.S. style travel planning, management and operations to expand [the petitioner] [in] Japan.” The petitioner further described the training program as follows:

[The petitioner’s] training program constitutes a curriculum that incorporates the unique and specific needs of the Japanese consumers with respect to the U.S. hospitality industry and American technology, customer services, computer reservation systems, security measures, and business and marketing strategies.

Through the 18-month training, the trainees will be equipped with the know-how of U.S. travel and tourism management, including U.S. travel regulations, security measures, local accommodations, risk management issues, e-ticketing and e-booking, computerized reservation systems, among other state-of-the-art technology.

The petitioner stated that the training program is not available in Japan because it “requires hands-on experience which cannot be learned through pure classroom instruction in Japan.” The petitioner stated that the training program will include “interaction with local businesses and service providers.” The petitioner also stated that the “U.S. style of travel operations is substantially different from travel operations in Japan,” such as the airfare, ticketing and reservation system, business travel management system, and cruise packages.

The petitioner stated that the training program will consist of the following parts: Basic Orientation (4 months); Computer Reservation System (6 months); Internet Marketing (6 months); Cruise Operations (2 months); and Optional Tours. The petitioner submitted a training manual for the program that is entirely in Japanese.

The director denied the petition concluding that the petitioner did not provide sufficient evidence to establish that the training in travel services does not exist in the beneficiaries’ home country. In addition, the director concluded that the evidence does not establish a bona fide training program.

On appeal, the petitioner asserts that the matter was unfavorably adjudicated because the Service did not issue a request for evidence or a notice of intent to deny. In addition, the petitioner reiterates the information provided in the original support letter. The petitioner also states that "America's hospitality industry is one of the largest in the world and has developed its own unique practices by integrating the latest technologies and perusing the highest level of security for travelers." The petitioner also explained that the training materials are in Japanese because it provides travel services to Japanese clients and they rely on Japanese speaking individuals.

As a preliminary matter, the petitioner contends that the director did not provide the petitioner with an opportunity to address the director's concerns through a Request for Evidence or a Notice of Intent to Deny. The regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied "[i]f there is evidence of ineligibility in the record." The regulation does not state that the evidence of ineligibility must be irrefutable. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the director to deny the petition without a request for evidence. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. In the present case, the evidence indicated that the petitioner did not establish eligibility for an H-3 nonimmigrant visa on behalf of the beneficiaries. Accordingly, the denial was appropriate, even though the petitioner might have had evidence or argument to rebut the finding.

The director found that the petitioner failed to establish that the proposed training could not be obtained in Japan, 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 understanding of U.S. style travel planning, management and operations. However, the petitioner did not present sufficient corroborating evidence to establish that the U.S. style travel planning, management and operations are different from those found in Japan. The petitioner mentioned that the difference between the U.S. and Japan is the computer reservation system utilized by American companies. However, several of the American computer reservation systems can be used outside of the United States, including in Japan. The petitioner also mentioned that the U.S. developed business travel management, but it did not provide evidence that business travel management is not utilized in Japan. Finally, the petitioner noted

that cruise operations in the U.S. are more developed than in other countries, and that in Japan the “idea is just catching on,” but this is not sufficient evidence that training in cruise operations does not exist in Japan.

In addition, the petitioner stated that it opened branch offices in Tokyo, Ikebukoro, Yokohama, Sendai, Tsukuba, Osaka, Nagoya, and Fukuoka. Thus, it is not clear why the beneficiaries cannot receive training in travel services from these branch offices. 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 travel services that may be taught in any travel agency that prepares packages for travel to the United States. The petitioner has not submitted any industry data or other information to support its claim that the training program must occur in the United States. It is not clear why the beneficiaries cannot learn about basic travel services from an agency in Japan. Thus, the petitioner has not established that the topics to be studied in the training program cannot be found in Japan. 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 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 16-month training program that is divided into five parts that are described in a few sentences. The program includes 6 months of internet marketing which is training that clearly can be provided in Japan. In addition, the training program is focused for 6 months on the computer reservation system but as mentioned above, several of the computer reservation systems are available in Japan, as evidenced by the fact that the petitioner’s office abroad can book travel tours to the United States. 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 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 submitted the materials that will be taught in the program but they are entirely in Japanese. The AAO understands that the trainees will learn in Japanese but it is impossible to understand the content of the training materials. 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. In addition, the petitioner did not specify the trainers of the 16-month program. It is not clear who will provide approximately 70 percent of classroom instruction and 30 percent on-the-job instruction for 16 months.

The petitioner noted that United States Citizenship and Immigration Services (USCIS) approved other petitions that had been previously filed by the petitioner for the same training program. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.