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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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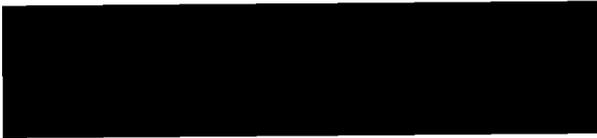
FILE: WAC 08 192 50543 Office: CALIFORNIA SERVICE CENTER Date: MAY 28 2010

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.

Thank you,

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 sustained. The petition will be approved.

The petitioner is a clinical research company that seeks to employ the beneficiary as a trainee for a period of 15 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 additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition concluding that the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country. 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.

The issue to be addressed is whether the director erred in finding that the petitioner had failed to establish that the proposed training could not be obtained in 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 beneficiary's home 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 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. 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 the present case, the primary purpose of the training program is to train the beneficiary on the petitioner's particular business practices. As stated on the Form I-129, "one of petitioner's correspondent clinical trial site location in Manila, Philippines, UST CEDRES is an outsource facility of petitioner tasked to provide complete services for conduct of drug bioavailability/bioequivalence, clinical research, among others." In the support letter, dated June 23, 2008, the petitioner stated that it "maintains an in-house training program to provide its foreign correspondents with the necessary knowledge and expertise in the different areas of clinical research of the company."

The petitioner in this particular case has submitted sufficient evidence to demonstrate that its business practices are sufficiently unique and not available in the Philippines. For example, the petitioner explained that it is necessary to train the beneficiary at the petitioner's place of business in order to "streamline the same developmental procedures and practices implemented by the [the petitioner] and UST CEDRES."

In addition, the petitioner submitted an affidavit from a doctor in the Philippines who states that the conduct of clinical trials in the Philippines is relatively new as most clinical trials are done in the United States and Europe.

The petitioner also submitted a letter from [REDACTED] of the Emergency and Humanitarian Action Unit of the Regional Office for the Western Pacific of the World Health Organization, and the vice-chancellor of the University of the Philippines. The author stated that "unfortunately, up to this time, the University of the Philippines has not established clinical research."

The petitioner also submitted a letter from the Associate Professor of Neurology at the Mayo Clinic, in Arizona, that stated, "one big difference between my research activities in the US and in the Philippines is the absence of research coordinator support in the latter. This is due mainly to a sore lack of training for potential Clinical Research Coordinators in the Philippines."

The authors have significant experience in medicine and clinical research in the Philippines. The authors of the letter verify that the training provided by the petitioner is not available in the Philippines. In addition, as noted above, since the training program is specific to the petitioner's business practices and procedures, this training is not available in the Philippines. The petitioner submitted sufficient evidence to establish that the proposed training is not available in the beneficiary's home country, and the AAO thereby concludes that the petitioner has satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

For the reason stated above, the petitioner has overcome the basis for the director's denial, and the director's decision is hereby withdrawn.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.