

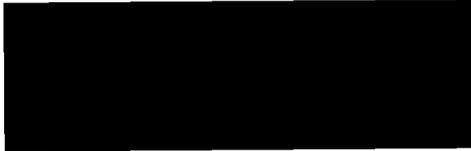
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



DS

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismissed. The petition will be denied.

The petitioner is a management group that seeks to employ the beneficiary as a trainee for a period of 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 additional evidence; (3) the petitioner's response to the director's request; (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.

On September 26, 2009, the director denied the petition on multiple grounds: (1) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; (2) the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad; and (3) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training. 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.

In a letter of support, dated January 13, 2009, the petitioner stated that it is a hotel management company that “owns and operates several properties throughout the United States and provides superior management of premier hotel properties for owners and asset managers.” The petitioner also explained that the training program will run for two years and will consist of 12 hours in classroom training and 28 hours of on-the-job training per week. The areas of focus for the on-the-job training will be the following: Front Office Operations and Management; Sales and Marketing; Yield Management; U.S. Based Hospitality Research and Development; Travel Research Reports (Star Reports); Encore, and Profit Manager Property Management Systems; and U.S. Hospitality financial methodologies. The petitioner also stated that the classroom training will focus on the following topics: Conducting Hospitality Orientation and Training; Time Management; Public Speaking; Leadership; You as a Supervisor; Handling Problems and Conflicts; Motivation and Team Building; Improving Communication; Improving Employee Performance; and, Staffing and Scheduling.

The petitioner explained that the proposed training is not available in the alien’s home country because of the following reasons:

Training that the alien will receive with the petitioner will help him pursue a better career in the hospitality industry in Trinidad [*sic*]. He will be trained in latest Research and Development (R & D) methods, (request for Proposal) RFP tools, HERO Yield Management System and other US based financial methodologies that are not currently available in her [*sic*] home country. Alien will be trained in handling Travel Research Reports (Star Reports). These are competitive analysis of all the hotels in a particular region. The reports determine the competitive behavior of the hotel under consideration with other hotels in the same area, and the city, the state [*sic*] and the whole Country. These are highly technical methods of training available only in the USA.

The petitioner also provided a training outline for the two-year training program. The outline indicates the topics that would be discussed in classroom instruction and the departments the beneficiary will shadow during on-the-job training.

On appeal, the petitioner contends that the beneficiary will not be placed in a position of productive employment. The petitioner also states that the beneficiary will assist several departments but he will not be responsible for carrying out the tasks “single handedly,” and that the “purpose and goal of the duty is not to increase productivity or to relieve the supervisors of

their duties. The stated purpose and goal of these tasks is to provide the trainee with practical hands-on experience.”

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 had not established that the beneficiary would not engage in productive employment. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires the petitioner to establish that the beneficiary would 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, and the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a petition in which the beneficiary would perform productive employment beyond that which is incidental and necessary to the training.

The training outline provided by the petitioner indicates that the petitioner will undergo 28 hours of on-the-job training for a two-year period. The beneficiary will be rotated in several departments such as the front desk, reservations, payroll, marketing and sales. However, the duties that the beneficiary will perform during the on-the job training is vague, particularly regarding the rotational assignment portions of the training. On appeal, the petitioner contends that the beneficiary will be supervised and will shadow the employees of each department but it is not clear what the beneficiary will be doing for 28 hours a week for two years. In addition, the duties described in the petitioner’s January 13, 2009 support letter, appear to be management duties rather than training topics. For example, the petitioner stated that the beneficiary will be “introduced to our major clients via Sales and Marketing Department and will be involved in property’s monthly sales blitz”; and, “will be responsible for undertaking any tasks assigned by his supervisor within his particular training department.” Thus, it appears that the beneficiary will be performing employment duties, rather than just receiving training from the petitioner. Without additional information regarding what the beneficiary will actually be doing while he is participating in each phase of the program, the evidence is insufficient to establish that the beneficiary will not in fact be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed, and that he will engage in productive employment beyond that incidental and necessary to the training. As such, the petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(ii)(2), 214.2(h)(7)(ii)(A)(ii)(3), or 214.2(h)(7)(iii)(E).

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 noted above, the petitioner stated that the beneficiary “will be trained in latest Research and Development (R & D) methods, (request for Proposal) RFP tools, HERO Yield Management System and other US-based financial methodologies that are not currently available in [his] home country.” In the letter of support, dated January 13, 2009, the petitioner also stated that “the training offered is so advanced and complex that it is not available in his home country of

[Turkey].” In reviewing the training outline, most of the training program will teach the beneficiary advanced computer systems that are not available in Turkey. It is not clear why the beneficiary will train for two years on computer systems that he cannot utilize when he returns to Turkey. 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 must document that the training provided to the beneficiary will help him enter into a career abroad. 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.

The director found that the petitioner failed to establish that the beneficiary does 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.

The petitioner submitted the beneficiary’s resume. The beneficiary graduated from [REDACTED] University and received a degree in Travel Management. In addition, the beneficiary worked in several hotel and tourism operations during the summer months since 2001. The petitioner is also present in the United States in J-1 classification employed by [REDACTED] and worked in food and beverage. The petitioner did not explain how the beneficiary’s past education and employment experience differs from the training that will be provided by the petitioner. Given the beneficiary’s education and employment history, it appears that he has substantial knowledge of this industry and does not require further training. The petitioner did not submit any evidence to establish otherwise, and the petition must be denied on this 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.