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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**

D5

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 13 2010**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

**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,

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 came before the Administrative Appeals Office (AAO) on appeal. On November 3, 2009, the AAO rejected the appeal since the Notice of Entry of Appearance as Attorney or Representative (Form G-28) was signed by the beneficiary, not by an authorized agent of the petitioner. On December 2, 2009, counsel for the petitioner filed a Motion to Reopen with a new Form G-28 signed by the petitioner. The AAO grants the motion to reopen and the appeal will be dismissed. The petition will be denied.

The petitioner is an event production company that seeks to employ the beneficiary as an event manager. 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 RFE; (4) the director's denial letter; (5) the Form I-290B and supporting documentation; (6) the AAO's decision on the appeal; and (7) the petitioner's motion to reopen. The AAO reviewed the record in its entirety before issuing its decision.

On November 20, 2008, the director denied the petition on the following grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (2) the petitioner failed to establish that the proposed training program would benefit the beneficiary in pursuing a career abroad. 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 support statement, the petitioner stated that the "trainee will gain the knowledge and skill of providing excellent service, witness supreme creativity, and exhibit overall quality performance."

On June 11, 2008, the director requested additional information regarding the petitioner's eligibility for H-3 classification on behalf of the beneficiary.

In response to the director's request, the petitioner explained why the proposed training is not available in the beneficiary's home country and how the training will help the beneficiary in finding a career abroad:

The knowledge and skill to be acquired by the beneficiary will be unique in the Philippines as there is no Philippine company that is set up similar to [the petitioner], offering the entire services required for any events. The services provided by [the petitioner] will be provided in the documents presented in the Company Profile section later on. The beneficiary ultimately plans to use the practical skills and training to be acquired to set up a company in the Philippines with possible business tie-up which [the petitioner] will seriously consider.

In addition, the petitioner stated that "while it is true that the beneficiary already possesses some expertise and training, her knowledge is insufficient in terms of practical application which the Petitioner's training program hopes to provide her."

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 is unavailable in the Philippines, the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration that the proposed training is not available in the alien's own country, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner

to submit a statement which indicates the reasons why the training cannot be obtained in the alien's 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 itself offers this training in the alien's home country. In other words, 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 support of the petition, the petitioner stated that the beneficiary will "gain the knowledge and skill of providing excellent service, witness supreme creativity, and exhibit overall quality performance." However; the petitioner did not provide a training outline so it is impossible to determine if this training program could not be obtained in the Philippines. The petitioner only submitted a handbook with general guidelines to working an event but did not present an outline of the training program such as topics, assignments, schedule, materials, and evaluation process. 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)).

In addition, the petitioner submitted articles in support of its claim that the training program cannot be found in the Philippines. Upon review of the articles, none of them specifically discuss event management in the Philippines. It is not clear how these articles support the petitioner's claims. 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. at 165.

The petitioner also submitted a list of courses offered at the University of the Philippines – Diliman and De La Salle University. The petitioner indicated that these two universities do not offer courses in event management. This course list is not an extensive list of all courses, including graduate programs, and the Philippines has more than two universities. In addition, the petitioner did not establish that training in event management cannot be obtained at a private company in the Philippines rather than at a university.

The petitioner did not establish the criterion under 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) and the petition will be denied.

The director also 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 professional experience letters of the beneficiary and her resume. The beneficiary was employed as an event manager with the petitioner since April 2007. The Form I-129 was filed in February 2008; thus, the beneficiary was employed with the petitioner as an event manager for almost a year. The petitioner did not submit any information as to how the experience the beneficiary obtained in working as an event manager for the petitioner for almost a year differs from the training she will receive in the training program. It appears that she has substantial knowledge of this industry and the petitioner did not submit any evidence to establish otherwise, and the petition must be denied on this basis.

Beyond the decision of the director, the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation.

Much of the information submitted by the petitioner is vague in nature and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis. The petitioner did not state how long the training program will last; who will train the beneficiary; what topics will be taught; what materials will be utilized to learn the topics; and, the amount of time the beneficiary will spend in classroom instruction and on-the-job training. Thus, the petitioner has not documented what will be taught during the training program. The vague, generalized description of the training program does not explain what the beneficiary would actually be doing on a day-to-day basis. The petitioner is not required to provide an exhaustive account of how the beneficiary is to 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 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).

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.