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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

B5

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 14 2010

IN RE: Petitioner: [redacted]
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:

[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,

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 retail sales and it seeks to employ the beneficiaries as retail sales trainees for a period of eighteen months. The petitioner, therefore, endeavors to classify the beneficiaries as 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; and, (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On April 13, 2009, the director denied the petition concluding that the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country.

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 dated January 29, 2009, the petitioner explained that it is a "retail and wholesaler company of a broad line of products, including several lines of cosmetics, health, and beauty products originating from the Dead Sea, as well as other specialty products catered to the holiday shopper." The petitioner also stated that it has developed a training program "that will teach young employees important management and marketing skills and familiarize them with the company's unique products, services, customers, suppliers, and common practices." In addition, the petitioner stated that the trainees upon completion of the training program will work for the petitioner's partners abroad, particularly in Israel.

The petitioner submitted a training outline that consists of the following phases: (1) Introduction to Retail Management (1 month); (2) Retail Merchandise Management (2 months); (3) Retail Supply Chain (2 months); (4) Product Development and Promotion (1 month); (5) Marketing Strategies (2 months); (6) The Notion of Customer Service (2 months); (7) Negotiation and Sales (2 months); (8) Finance and Accounting (2 months); (9) Human Resources and Personnel Management (2 months); and, (10) Going Global (2 months).

On February 13, 2009, the director requested additional information regarding the petitioner's eligibility for H-3 classification on behalf of the beneficiaries.

In a response letter dated March 27, 2009, counsel for the petitioner stated that eight out of the twelve beneficiaries previously worked for the petitioner as sales clerks and in that position the beneficiaries "took limited responsibilities of selling goods; accepting payments; issuing receipts; daily opening and closing the cash register; maintaining inventory; recommending, describing, selecting and explaining the use of merchandise." Counsel further explained that the training program will teach the beneficiaries business management that is "unlike anything they have learned in the past."

In addition, the petitioner explained why the proposed training is not available in the beneficiary's home country as follows:

> The training individuals will receive at [the petitioner] is so uniquely structured in that it is the only place in the world that can prepare these individuals to manage and develop a retail business with [the petitioner's] proprietary knowledge and information on successfully managing such a business. [The petitioner] commands high respect in the retail and wholesale arena, owing to the company's unrivaled success, brand new ideas and entrepreneurial undertakings. [The petitioner] is a leading retail and wholesale company of a broad line of cosmetics and toiletries and other novelty items.

> Israel's economy is in flux and one cannot have full exposure of the working of a free market economy, as one can have in the USA being the most successful capitalist economy. Apart from this, a professional management training program specially focusing on retail is not available in Israel. The specialty retail concept was developed in US and still a novelty in Europe and still does not exist in Israel. The management programs available at different universities are not comparable to what is being offered by [the petitioner]. The petitioner is providing an eighteen (18) months intense training program addressing the challenges of developing and managing a business focusing on specialty retail, unlike anything the beneficiaries can obtain in their home country by completing a management university course. The distinctiveness of [the petitioner's] products combined with the company's experience in the retail industry makes it only one of its kind. Therefore the opportunity of training at [the petitioner], under tutelage and mentorship of highly successful professionals, allows for any individual, from any country, to gain knowledge unlike anything they can ever experience in their home countries.

The petitioner also submitted three letters from individuals that have evaluated the training program and stated that it is unique and unavailable in Israel.

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 Israel, 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.

On appeal, counsel for the petitioner contends that the training program in unique is the "methods of imparting the training and the distinct exposure on the practical aspect of running [the petitioner's] retail business." Counsel further stated that "what makes the training unique is not the broad subject matter of the training, but the milieu of the training, the instruction material, the know-how of running the business proprietary to [the petitioner] and methods employed in the training of the students, in the efforts of transforming them into successful

entrepreneurs." Several of the training topics are general in nature and could be taught in any retail company or educational institution that teaches business management. Although the training program may utilize the petitioner's processes as a working model of its business approaches, the training outline does not clearly state how this program is unique to the petitioner. The topics are general management issues that can be trained in any company or educational institution. The petitioner is engaged in the retail sales of Dead Sea products but the petitioner failed to submit evidence that a company that sells Dead Sea products is not located in Israel. Although the petitioner stated that the beneficiary will learn specific procedures and techniques utilized by the petitioner, the training program does not outline training in proprietary techniques and the petitioner does not explain how this retail company may differ from other retial companies in Israel. 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)).

The petitioner submitted an "expert opinion" letter from Professor [redacted] from the Institute for the Study of Israel in the Middle East. The author stated that it reviewed the petitioner's documents and concluded that "there are no similar programs such as the one offered by [the petitioner] currently available in Israel." The author contends that the "American work culture is distinctive, as it has developed the most advanced capitalist economy of the world." Even if the author believes that experience in an American company is different because it is the "most advanced capitalist economy of the world," it does not mean that such training could not be found in Israel. In fact, the author stated that "many American retail businesses are establishing branches in Israel." Therefore, training in an American company could be obtained in Israel.

The petitioner submitted a second letter from [redacted] a professor of Education at Mar Elias Campus, Israel. The author stated that "the idea of specialty retail business was conceived in the United States and is still a novelty in other parts of the world." The author did not submit any evidence to corroborate this claim.

The third letter is from a manager of [redacted] a human resources group in Israel. The author stated that the "American work culture is unique being the most advanced capitalist economy of the world."

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, the opinion letters all state that the United States is the most advanced capitalist economy in the world; but this assertion is not evidence that training in retail sales of cosmetics is not available in Israel or that the training program is so unique that it must be completed in the United States. 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.