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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

D5

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 28 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,

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 restaurant that seeks to employ the beneficiary as a management trainee for a period of eighteen 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 evidence (RFE); (3) the petitioner's response to the director's 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.

The director denied the petition on multiple grounds: (1) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; (3) the petitioner failed to establish that it possesses physical plant space and sufficiently trained manpower to provide the training specified; and, (4) 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 its letter of support, dated April 10, 2009, the petitioner stated that it "has undertaken an ambitious project of establishing various fine dining and catering facilities throughout the New Jersey and New York City." The petitioner explained the training program as follows:

The objective of [the petitioner's] training program is to familiarize trainees with the intricacies of working within a premier food service company such as ours. Throughout the program, the training will refine his technical skills, his ability to communicate effectively with clients as well as with each of the department heads, and to establish the style and manner in which business is conducted in the United States. Furthermore, the trainee will also be afforded the opportunity to learn in one of the world's leading food service companies. A key part is to expose the trainee to current trends in the United States. The type of training obtained from this program is an invaluable opportunity to build and enhance the trainee's skills.

The petitioner also stated that [REDACTED] will personally train the trainee through formal instructional classroom lessons and observational training in our practical business operations on the ground." The petitioner also stated that "additional classroom training will be provided by the senior manager of each department in which the trainee is rotated." The general manager will also supervise the trainee.

The petitioner stated the following as to why the training is unavailable in the beneficiary's home country of India:

As detailed above, the training provided by [the petitioner] is not available in India, as India still uses Indian business models, based on heavy government control and very little foreign infrastructure or investment capital. This is a very outdated model that is slowly changing due to more open trade practices, however due to the rapid growth of the market sector globally Indian companies and teaching institutions are slowly interacting with foreign companies using the global/American business model. Unfortunately, the demand for food service company managers with the global/American business training is far outstripping the supply of such managers, due to the slow reaction of Indian business institutions.

The petitioner submitted a training outline with the following topics: Orientation (6 weeks); Food Service Background (16 weeks); Business Management (28 weeks); Service Management, Production/Manufacture, and Marketing/Sales Operations (17 weeks); and Advanced Marketing, Sales and Business Development (11 weeks).

Upon review, the AAO agrees with the director's finding that 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 demonstrate that it has an established training program, and 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. The training outline 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 program is an 18-month training program but the petitioner's outline of the program consists of three pages. The outline lists general topics of food service management but does not explain in detail what the training will consist of for each topic. In addition, the petitioner did not provide a break down of time that will be spent in classroom instruction and observational training. The petitioner also stated that the beneficiary will be rotated to several departments but failed to explain which departments and what the beneficiary will be doing during the rotations. 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, 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 did not provide a clear explanation of how the beneficiary will be evaluated throughout the training program. The petitioner stated that the evaluation of the beneficiary will include evaluation of written assignments, theoretical practical assignments, and tests but it is not clear on what the beneficiary 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 beneficiary, or materials that the beneficiary will use in order to learn the topics to be discussed.

The director also noted that the petitioner failed to establish that the proposed training could not be obtained in India, 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 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 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.

As noted above, the petitioner stated that the training is not available in India because India "still uses Indian business models, based on heavy government control and very little infrastructure or investment capital." The petitioner also stated that "despite of increasing graduates coming out from various professional colleges in India, various industries such as food service businesses are facing shortage of manpower in the middle level management occupations."

As noted in the petitioner's support letter, the goal of the training program is to provide the trainee with understanding of U.S. style business models in food service management and operations. However, the petitioner did not present sufficient corroborating evidence to establish that the U.S. business models are different from those found in India. In addition, the petitioner did not submit evidence to establish that there does not exist a restaurant or food service company in India that follows the U.S. business models. In fact, the beneficiary worked in a McDonald's in India for two years, thus, it is clear that there are restaurants in India that follow the U.S. restaurant business model. Finally, the petitioner noted that the India business model is outdated, but this is not sufficient evidence that the type of training offered by the petitioner does not exist in India.

In addition, the petitioner submitted a letter from [REDACTED] at Poonga College of Arts & Science in India stating that "any training for management personnel in the restaurant industry is not currently available in India, as India still uses Indian business models, based on heavy government control and very little foreign infrastructure or investment capital." The author does not note the location of the petitioner, nor indicate whether she reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor does she describe the training program in any meaningful fashion. The extent of her knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of her pronouncement and this submission is therefore not probative of any of the criteria at issue here. Nor has the author submitted any industry data or other information to support any of her opinions. Thus, the petitioner has not established 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 beneficiary's 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 found that the petitioner had failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G). The director noted that the petitioner failed to explain how the trainers will train the beneficiary and continue operating the business. The petitioner stated that the trainers will include the Manager of Operations and Business Development, the senior manager of each department in which the trainee is rotated, and the general manager. The petitioner also stated that the Manager of Operations and Business Development is the "individual responsible for training all new personnel," but training of new personnel is different from the 18-month training program that is being offered to the beneficiary. In addition, the petitioner did not provide any evidence of the senior managers that will be involved in the training and how they will be able to train the beneficiary while also performing their regular work activities. The information is vague and the petitioner did not provide sufficient evidence to establish that the trainers can train the beneficiary for 18 months while also operating the business. 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 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.

In the director's denial decision, she noted that the beneficiary was employed by McDonalds in India as a Crew Chief for two years. In addition, the beneficiary worked as a restaurant manager for the [REDACTED] for six years. Although the director noted the beneficiary's past work experience in the restaurant industry that is focused on U.S. style restaurant management, the petitioner did not discuss this issue on appeal. The petitioner did not present evidence to establish that the restaurant management experience previously obtained by the beneficiary differs from the training that will be provided by the petitioner. 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 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.