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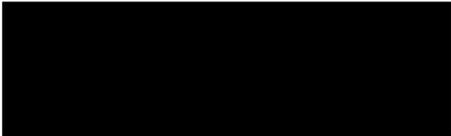
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D5



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 16 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:



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 \$585. 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 "consulting services for parent company" and it seeks to employ the beneficiary as an operations manager trainee for a period of twelve months and ten days. The petitioner 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.

On September 2, 2009, the director denied the petition on two 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; and (2) the petitioner failed to establish that it possesses the physical plant space and sufficiently trained manpower to provide the training.

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, the petitioner explained that it is a fully-owned subsidiary of [REDACTED] and it "provides extensive legal, securities compliance, investor relations, accounting, and gaming consulting services to the parent company." The petitioner stated that the training program is entitled, "Managing Gaming and Hospitality Operations." The petitioner further stated that the parent company has started the "construction of a five-star hotel in [REDACTED], [REDACTED]," and the beneficiary is currently working on this project. The training program will assist the beneficiary to "further his involvement in this project" so that he can continue to work for Thunderbird-India.

The petitioner stated that this training is not available in India because the "gaming (casino) industry in India is very small, and is concentrated in just one province of the country." The petitioner further stated that the casinos in India are new and operating on a smaller scale. The training program will also expose the beneficiary to the parent company's business model.

The petitioner explained that the training program will only consist of on-the-job training and the beneficiary will not have any classroom instruction. However, the beneficiary "will be required to regularly visit various relevant consultations, seminars and expositions." The petitioner stated that the beneficiary will be evaluated by a mentor and tasks will be assigned by the mentor.

The training outline consists of six phases: (1) Induction; (2) Overview of organizational structure; (3) visit to various casinos in the U.S.; (4) corporate compliance training; (5) overview of casino operations; (6) participating in setting up a compliance program for the India operations.

The petitioner also stated the purpose of the training program as follows:

Upon returning to India the candidate will aim to create an information sharing platform between [REDACTED] and [REDACTED] overseas subsidiaries. The candidate will apply the skills and experience developed during the training to the development of our India project. The candidate will work to implement our business model in India. This training is thus in line with [REDACTED] strategy of identifying and grooming talent for bigger and more exciting projects in the years to come, as we intend to expand in South Asia using India as our regional hub.

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 submit evidence that the training program does not deal in 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. 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 program is a twelve-month training program that is divided into six phases. Although the petitioner submitted a training outline with topics to be discussed in each phase, the description consists of only a few paragraphs. For example, phase five will last for four months and the description of this phase includes vague ideas such as the beneficiary will "share experience with the various Country Managers visiting our San Diego office;" "interact without human resources teams;" and "review the company's various casino operations manuals to familiarize himself with the day-to-day operations of casinos." These explanations are very vague considering that the trainee will undergo six to eight hours a day of training for four months to complete this phase. Given that the entire training program will consist of on-the-job training, the petitioner failed to explain what that will entail in an office with four employees. In addition, the goal of the program is to train the beneficiary in operations management and it is not clear why the beneficiary is not training in one of the resort and gaming locations rather than the consulting office that has four employees. 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. As such, it has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

Furthermore, the director requested that the petitioner submit past training materials. In response, the petitioner stated that it uses a "Sharepoint database so as to connect to all of our offices and operations in the nine different countries in which we do operations." A database that is utilized to run operations is not the same as training materials for this specific training program. The training program is lacking a syllabus, reading materials, work assignments and an itinerary. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 beneficiary will be supervised by a mentor that will determine the trainee's tasks, but it is not clear on what the beneficiary will be tested or what tasks the beneficiary will need to perform 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 determined that the petitioner has not established that it has sufficiently trained manpower to provide the training specified. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified.

In response to the RFE, the petitioner explained that the current employees include a general counsel, director and executive vice president; a compliance officer for the parent company and all of its subsidiaries; a measurement and compliance officer for the parent company and all its subsidiaries; and an investor relations officer for the parent company and all of its subsidiaries. The petitioner explained that all of the employees will assist with the training program and the parent company's "subsidiaries have 5, 700 employees worldwide, many of whom will assist in Beneficiary's training." It is not clear how the four employees of the company can take over the duties of trainer for 12 months and still perform the regular operations of the business. In addition, the petitioner cannot rely on the 5,700 employees worldwide because they are not located at the training facility and their job duties do not include trainer for this training program. 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 regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition. For this additional reason, the petition may not be approved.

Beyond the decision of the director, 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)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States.

As the claimed purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize his newfound knowledge would be for the petitioner. The petitioner claims that its parent company is opening a new property in India. However, the petitioner did not provide any evidence to establish that it is in fact a subsidiary of Thunderbird Resorts. The file does not contain any evidence of the relationship between the petitioner and Thunderbird Resorts such as tax returns, articles of incorporation, stock certificates, or financial records. In addition, the petitioner did not present any evidence that Thunderbird Resorts plans to hire the beneficiary at its property in India upon completion of the training program. Furthermore, the petitioner did not submit evidence that the property in India will be completed by the time the beneficiary completes the training program. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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 evidence is not sufficient to establish that the petitioner will have an office abroad to employ the beneficiary upon completion of the training program. 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. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner failed to demonstrate that 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, and that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. *See* 8 C.F.R. § 214.2(h)(7)(ii)(A)(2). The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The AAO incorporates its previous discussion regarding the vague and generalized description of the training program contained in the record. In addition, some of the descriptions in the training outline appear to be more productive work rather than training such as, the beneficiary "will be involved in coordinating communications between the different countries and subsidiaries the company does business with to keep track of corporate upkeep;" "network with other business development team;" "interact with our human resources teams from our different casino operations around the world;" and "the candidate will apply everything learned in the preceding phases and participate in the development of casino operations manuals for our India operation." Several of these tasks appear to be productive employment and the petitioner's vague description does not state otherwise. The petitioner has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(2), 214.2(h)(7)(ii)(A)(3), or 214.2(h)(7)(iii)(E). For this additional reason, the petitioner will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* 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 except to enter the additional bases for denial, *supra*.

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.