

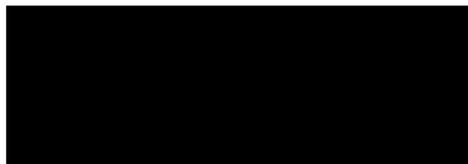
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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



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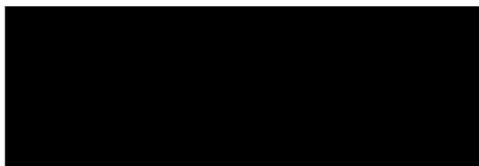
DATE: APR 01 2011 Office: 

FILE: 

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:



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 the production and sale of fashion accessories. It seeks to employ the beneficiary as a trainee—design, sales, marketing and public relations for a period of 22 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 the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training, and, (4) that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States. 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 dated April 27, 2010, the petitioner stated that it is a collaboration between [REDACTED] and it is “both a shop and design studio where clients may browse the ready-to-wear collections or custom design their own hats with our experienced designers.” In addition, the petitioner stated that the training program “intends to differentiate itself by offering full-service design development as a program,” and “due to the complexity and uniqueness of strategies utilized here, the location of the fashion capital of the world in [REDACTED], training is only available onsite at our corporate headquarters in [REDACTED].”

The petitioner stated that the beneficiary will receive four hours of classroom instruction and four hours of practical assignments. The training outline consists of five phases: Introduction and Sales (14 weeks); Client Services and Design (34 weeks); Marketing (12 weeks); Public Relations (12 weeks); Advanced (16 weeks).

The petitioner also described the career abroad for which the training will prepare the beneficiary as follows:

[The petitioner’s] trainees, upon completion of the program, will possess the knowledge to successfully implement, administrate and maintain design, sales, marketing and merchandising business strategies to attract clientele to a new or existing fashion business. Trainees will possess the knowledge to properly evaluate the likelihood of success of a fashion line, its cost to produce and retail, the sales, marketing and merchandising ability of the designer, and the eventual profit to a company. This is particularly useful in countries where the fashion industry is just starting to develop into an international business, such as it has prominently been for many years in [REDACTED].

The petitioner submitted print outs of its website and several articles about the petitioner’s owner and its products.

On May 5, 2010, the director requested further evidence documenting eligibility for the H-3 nonimmigrant visa. In a response letter dated, June 17, 2010, counsel for the petitioner explained that the petitioner is very successful and has eight boutiques in the United States and [REDACTED] and it “wishes to expand its network and bring the art of [REDACTED] making into [REDACTED].”

markets.” Counsel also stated that the “fashion industry has a long standing institution of mentorship and training,” and that “many designers in the industry have hosted new designers to train them so that they may eventually launch their own line.”

Counsel for the petitioner also explained that the beneficiary will be trained by the president/designer and a second designer, who are “two people who have started and launched their own design line from the ground up and made it grow into a global empire.” Counsel also explained that the “time spent in productive employment is extremely limited, and the trainee will remain under the supervision of our experienced training staff.”

On appeal, counsel for the petitioner further explains why the training is not available in the beneficiary’s home country for the following reasons:

The Program offered by these world renowned designers and consisting of a full immersion into the fashion industry and the art of [REDACTED] hat making is not available in [REDACTED] because it is very specific to the [REDACTED] millinery industry and not one that is common training to fashion design. The training is very distinct from customary fashion design because the materials with which the hats are made require different treatment, and the science of hat making is unique. No amount of studies in a university in business, marketing or fashion merchandising can be as beneficial to the Trainee as a full immersion program in one of the world’s most famous millinery ateliers. The training is not available in [REDACTED] simply because [REDACTED] are not in [REDACTED], nor is there anybody of their caliber in [REDACTED] millinery presently in [REDACTED] nor is there a tradition of hat making in [REDACTED] as it is not part of their culture; it is uniquely [REDACTED]

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 does not clarify what the beneficiary would actually be doing on a day-to-day basis. The program is a 22-month training program but the petitioner’s outline of the program consists of three pages. The program is broken down into five phases and the petitioner provides one paragraph to explain each phase. In addition, the petitioner stated that the training program will consist of four hours of classroom instruction and four hours of practical training each day; however, the petitioner provides only a

general explanation of topics to be discussed but does not provide the syllabus that will be followed, information on how the materials will be taught, information on the reading 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 petitioner stated that the beneficiary “will be provided with learning materials such as “[the petitioner’s] business plan and budgetary documents,” but it is not clear how these are sufficient materials for four hours of classroom instruction per day for 22 months. The petitioner also submitted an article regarding how to make a hat, and an article that was in [REDACTED]. It does not appear that this is sufficient reading material for the entire program. In addition, the director requested further information about the training program and the petitioner continued to submit the same training outline as initially submitted. 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).

Furthermore, the petitioner stated that the beneficiary will receive four hours of practical training each day for 22 months but the explanation of that training is also vague and general. For example, the trainee will “observe and learn to assist the President in calculating the sales figures and preparing simple financial reports showing the Company’s monthly performance;” “make various styles of hats and will be given practical exercises in each step of the hat making process;” “observe the Company and its Designers work with the press and public;” and, “observe the President as she works with magazine editors to respond to product requests with appropriate and winning choices so that [the petitioner’s] products receive maximum coverage.” It is not clear how these tasks will take up four hours a day for almost two years. 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 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).

The director also noted that the petitioner failed to establish that the proposed training could not be obtained in [REDACTED] 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.

As noted above, the petitioner stated that the training program “intends to differentiate itself by offering full-service design development as a program,” and “due to the complexity and uniqueness of strategies utilized here, the location of the fashion capital of the world in [REDACTED]

██████████ training is only available onsite at our corporate headquarters in ██████████. On appeal, counsel stated that “the Program offered by these world renowned designers and consisting of a full immersion into the fashion industry and the art of ██████████ hat making is not available in ██████████ because it is very specific to the ██████████ millinery industry and not one that is common training to fashion design.” However, the petitioner did not submit any documentation to support this claim. The petitioner did not present evidence that ██████████ does not have any manufacturers of hats modeling the ██████████ style, or that fashion schools in ██████████ do not offer this type of training. In addition, most of the training program consists of training in marketing, public relations and sales that are similar to any fashion company and does not appear to be unique to the petitioner. 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 also found that 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires a demonstration 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. 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 petitioner submitted a training program outline and stated that the beneficiary will receive four hours of classroom instruction and four hours of hands-on training each day for 22 months. As noted above, the petitioner submitted a vague description of the 22 month training program and it is not clear what the beneficiary will actually do for her hands-on training. Thus, with a vague description of the day-to-day activities performed by the beneficiary, the petitioner did not provide sufficient evidence to overcome the director’s concern that the training program will result in productive employment beyond that which is incidental and necessary to the training. 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 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).

The director also concluded that the petitioner did not establish that the training program will benefit the beneficiary in pursuing a career abroad. 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, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

With regard to the beneficiary's career abroad, counsel for the petitioner states on appeal that the "full immersion experience in the Company's design studio space, including business mentoring, educational seminars, and networking opportunities, will provide a way for the Trainee to reach her full potential and become an integral part of the fashion community." The AAO finds that the training program would prepare the beneficiary for a job in the fashion industry abroad. The petitioner has satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4).

Beyond the decision of the director, 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 petitioner stated that the trainers of the program will be the president/designer and a second designer. The petitioner also explained that it has been very successful and has rapidly grown from one boutique to eight boutiques in the United States and [REDACTED]. It is not clear how the owner and designers of the products produced by the petitioner can run eight stores and perform their workload while they are instructing the beneficiary during the 22 months of the training program that consists of 40 hours per week of classroom instruction and on-the-job training. 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.

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.