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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**



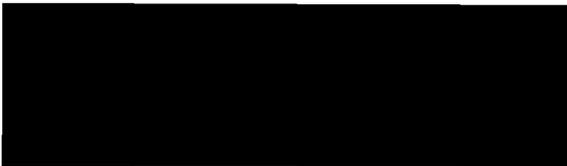
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 15 2011

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 \$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 [REDACTED] that seeks to employ the beneficiary as [REDACTED] for a period of two years.¹ 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 beneficiary does not already possess substantial knowledge and skills in the proposed field of training; (2) the petitioner failed to establish that the proposed training is unavailable in the beneficiaries' home country; (3) 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, (4) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the 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;

¹ The Form I-129 indicated that the petition was for two beneficiaries. The petitioner stated on the Form I-290B that it wishes to remove one beneficiary, [REDACTED], and keep [REDACTED] as the sole beneficiary of the petition.

- (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 March 18, 2010, the petitioner explained that it is the "second largest club in the United States and we have an excellent reputation and vast network of clients." The petitioner also stated that it wishes to train the beneficiary so that the beneficiary will "promote our club for more international recognition and eventually have more golf tournaments at our location."

The petitioner provided an explanation of the purpose of the training program as follows:

The Management in Development program is designed to provide trainees with development in social, technical, operational and management skill sets as they relate to the hospitality and club industry, specifically in the area of Golf.

Participants will analyze hospitality management practices to include: service operations, and financial management and human resources. Participants will also develop problem solving and decision making abilities through direct observation, analysis and evaluations of various situations.

The training program emphasizes the specialized business practices common in the industry, as well as communication skills and relations. The ultimate purpose of the training program is to train individuals who are returning to their specific employment abroad and to develop a business relationship with these employers.

The petitioner indicated that the training program will consist of eight modules and it is "structured to provide an opportunity to participate in module rotations for a specified department." The eight modules are the following: Introduction to the Pro Shop (1 month); Merchandising (1 month); Global Positioning System (1 month); Tournament Operations (12 months); Defining and Marking the Courses (2 months); Locker Room (2 months); Golf Management (2 months); and, Golf, Rules, Infractions, Education Committee (2 months). The petitioner also stated that the training program will consist of 50% direct academic instruction and 50% of supervised practical training. In addition, the petitioner indicated that the upon completion of the training program, the beneficiary will be "qualified to assume managerial responsibilities as a Golf Manager" when he returns home.

The petitioner also submitted questions regarding topics that will be taught for each rotation. In addition, the petitioner submitted job descriptions for positions in each department that is involved in the training program rotations. Finally, the petitioner submitted several of its brochures.

On April 1, 2010, the director sent a request for additional evidence. In a response letter, dated April 19, 2010, counsel for the petitioner stated that the beneficiary will be evaluated throughout the training program by "verbal, informal feedback throughout the trainees shift is given daily to the trainee by the assigned supervisor(s)." The trainee will also meet monthly with the Directors of Golf, and a formal written performance evaluation will be conducted annually. Counsel listed the supervisors for each module of the training program. In addition, counsel stated that the PGA certification will be taught by the PGA school. The petitioner submitted numerous documents and training manuals for each department that will be utilized during the department rotations.

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 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 the beneficiary's resume which indicated that he received a centurion diploma in Golf Directorship and Management and completed the second year accreditation for the PGA of South Africa. The petitioner noted that the beneficiary did not receive the full PGA certification in South Africa, and submitted a letter from the Manager Training and Education of the PGA of South Africa that confirms the beneficiary passed year 2 and "has no current affiliation with the PGA of South Africa." According to the beneficiary's resume, for several years he worked as a golf counselor and golf coach, and for sixteen months he worked as an assistant pro and operations manager where the beneficiary was "running shop and running and organizing golf events and gold days; and for eight months he was employed in outside operations for a country club in Boca Raton, Florida. Furthermore, the beneficiary was employed by the petitioner for approximately 14 months as a 2nd assistant golf professional in H-2B status.

According to the training outline, the "Management in Development program is designed to provide trainees with development in social, technical, operational and management skill sets as they relate to the hospitality and club industry, specifically in the area of Golf." However, it appears that the beneficiary has extensive educational and professional experience with management in the Golf Industry. As noted in the beneficiary's resume, he received a centurion diploma in Golf Directorship and Management. In addition, the beneficiary has several years of work experience in golf operations and management. The petitioner has not provided sufficient

evidence to establish that the training it will provide differs from the training the beneficiary received throughout his academic and professional background. 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)).

On appeal, the petitioner noted that the training program will also provide the beneficiary with PGA certification from America since the beneficiary did not complete his PGA certification in South Africa. However, the petitioner obtained second year accreditation for the PGA of South Africa and without further information, it is not clear if a second year accreditation for the PGA of South Africa is very close to obtaining the actual certification. In addition, the petitioner noted that the PGA of America is different from PGA of South Africa but did not present any information or evidence to explain these differences to corroborate the claim that the beneficiary does not already have substantial expertise in the field of training.

In addition, the beneficiary has been previously employed by the petitioner for approximately 14 months in H-2B status and held the position of second assistant golf professional at the petitioning club. The petitioner did not present any evidence to show that the experience the beneficiary received during his employment with the petitioner in H-2B visa status differs from the training the beneficiary will receive in the training program.

Thus, as the petitioner received a diploma in golf directorship and management and was employed by several country clubs and organizations working in golf management positions, it appears that the beneficiary has substantial knowledge of this industry. The petitioner did not submit any evidence to establish otherwise, and the petition must be denied on this basis.

The director determined that the petitioner failed to establish that the proposed training could not be obtained in South Africa, 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.

The petitioner asserts that the training will help in golf management and provide the beneficiary with PGA certification that is different from the PGA certification given in South Africa. However, the petitioner did not provide any evidence to establish that the PGA certification in

the United States greatly differs from the one obtained in South Africa. In addition, the beneficiary received a degree in golf directorship and management, thus, this is evidence to establish that training in golf management is in fact available in South Africa since the beneficiary was able to receive a degree in this field. In addition, the beneficiary has worked in several positions relating to golf management in South Africa, thus, it appears that training in golf management and directorship is available in South Africa. The petitioner did not submit sufficient evidence to establish that the type of training provided in the training program cannot be obtained in South Africa. In addition, the petitioner submitted an outline of the training program and, despite its claim that the focus of the training program will be its unique business practices, it appears that the whole training will consist of learning generally the business operations of a golf department in a country club. The petitioner did not provide evidence to establish that this training program is not available in South Africa when in fact it is a country that has several country clubs and golf courses. Moreover, the petitioner did not present any corroborating evidence to establish that its golf management and directorship practices are different from those found in South Africa. 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)).

Moreover, in reviewing the training program, the description of the course is vague and general in nature. It appears that the trainee will learn general concepts of golf operations in a country club that can be taught at a country club in the beneficiary's home country of South Africa. The petitioner has not submitted any industry data or other information to support its claim that the training program must occur in the United States. It is not clear why the beneficiary cannot learn about the business operations of a country club in South Africa. Thus, the petitioner has not established that the topics to be studied in the training program cannot be learned in South Africa. In addition, the petitioner did not establish that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies. The petitioner 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 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 two-year training program that is divided into eight modules. Although the petitioner submitted a training outline with topics to be discussed in each module, the description is only a few sentences and much of the training is general to all country club and golf operations and not specific to the petitioner's business activities. Furthermore, the petitioner stated that the beneficiary will receive PGA certification but the petitioner did not provide any information of the training that is necessary to receive this certification and how the beneficiary will obtain this

certification. In addition, the petitioner stated that 50 percent of the training will consist of classroom instruction and 50 percent of the time will be spent on practical training; however, the petitioner did not explain at all what that will entail. The petitioner indicated the topics to be discussed but did not explain the outline and syllabus for the classroom instruction and what will consist of the practical and/or on-the-job training. 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. The petitioner 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 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 AAO agrees. 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.

Without additional information regarding what the beneficiary will actually be doing on a day-to-day basis, the AAO concludes that he will in fact 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 he will engage in productive employment beyond that incidental and necessary to the training. 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).

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.

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.