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

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U.S. Citizenship  
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Services



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

JAN 20 2011

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [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 a real estate company that seeks to employ the beneficiary as a 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 program would benefit the beneficiary in pursuing a career abroad; (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; (4) the petitioner had failed to demonstrate that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States; and, (5) the petitioner failed to establish that it possesses physical plant space and sufficiently trained manpower to provide the training specified. 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 December 17, 2008, the petitioner explained that it has invited the beneficiary to participate in the training program of [REDACTED] with focus on Property Management and Leasing” which is a 15 month<sup>1</sup> program “intended to develop skills needed to fill the position of [REDACTED]

[REDACTED] The petitioner further stated that the goal of the training program is to “develop highly qualified individual/s to fill in key positions at [the petitioner], its branches and affiliates abroad.”

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

This training program covers practical management techniques for houses, apartments, co-ops, condos, subsidized housing, office buildings, retail properties, and industrial facilities. Key topics include evaluation properties; marketing and advertising; referrals; using leasing agents; buying, selling, and closing; understanding and negotiating leases; landlord/tenant relations and obligations; qualifying tenants; collecting rent; preparing contracts, schedules, and reports; repairs, maintenance, and improvements; managing utilities; energy conservation; cash flow; management fees; tax records; insurance; return-on investment and capitalization formulas; and much more.

The petitioner further stated that the training program will consist of 80 percent of the time in academic and/or classroom instruction, 20 percent of the time in practical and/or on-the-job training and 5 percent of observation of day to day real estate investment and property management. The petitioner also stated that “under no circumstances would the trainees engage in productive employment during the course of the training.” In addition, the petitioner stated that it offers this training program “not for the purpose of permanent domestic placement of the

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<sup>1</sup> The file contains conflicting information on the length of the training program. In several occasions, the petitioner stated that the training program lasts 15 months while in other instances it stated that it will last for 18 months. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

trainee within [the petitioner], but rather we find it beneficial to train career-oriented individuals with the proper credentials who will take [the petitioner's] experience and contracts abroad."

The petitioner submitted an outline of the training program. In the outline, the petitioner explained the supervision of the program as follows:

Due to the significance of the [redacted], the Operations Manager is in-charge of full supervision. Although, each session and/or program will be facilitated by an individual expert in that field participants are required to report directly to the Operations Manager at the end of each session. Reports, feedback, test results, worksheets and performance evaluations are periodically submitted to the Operations Manager.

The outline also lists the five phases of the training program as follows: Orientation (2 months); Property Management (4 months); Management of Different Types of Properties (6 months); Business Strategies (5 months); and Evaluation and Assessment (1 month).

On March 11, 2009, the director sent a request for additional evidence. In response, the petitioner submitted a letter that stated the petitioner has a general manager, an assistant, a cleaning crew and the beneficiary "who is in training to take on more of the management responsibility." The petitioner also submitted the Employer's Quarterly Federal Tax Return for the first quarter of 2009 that indicated three employees, one of whom is the beneficiary. The petitioner also submitted several pictures of properties but did not present any evidence that the petitioner has anything to do with these properties. The petitioner also submitted photographs of its office which is one room with two desks and a round table with three chairs in the middle of the room.

The director requested several documents in its RFE and the petitioner only responded to a few of the director's requests. 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).

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 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 an eighteen-month training program that is divided into five phases. Although the petitioner

submitted a training outline with topics to be discussed in each phase, much of the training is general to all business operations and not specific to the petitioner's business activities. The outline consists of general topics that would be taught in any real estate course, and a general overview of the topic. The petitioner stated that 80 percent of the time will consist of classroom instruction and 20 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 what materials will be utilized 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.

In addition, the petitioner stated that the beneficiary will be evaluated by case studies, oral and written examinations and observation. The petitioner stated that the beneficiary will take exams 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 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 noted that the petitioner did not demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States pursuant to the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

As the 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 her newfound knowledge would be for the petitioner. The petitioner stated in its support letter, dated December 17, 2008, the training program will "develop highly qualified individual/s to fill in key positions at [the petitioner], its branches and affiliates abroad." However, the petitioner did not submit any evidence that it has a branch or affiliate office abroad, or has any plans to open one soon. As the petitioner has no operations in the Philippines, there exists no setting in which she would be able to utilize her newfound knowledge. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). In this particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training. The petitioner stated that it wishes to expand the business abroad. However, the petitioner did not provide any corroborating evidence such as a business plan, a lease for a location in the Philippines, or financial statements to support the opening of an

office in the Philippines. 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)). In addition, the training program discusses real estate operations as it is performed in the United States; however, the petitioner did not present evidence to establish that the same real estate operations performed in the United States are also practiced in the Philippines.

In addition, on appeal, the petitioner submits an offer letter addressed to the beneficiary from [REDACTED] that offers the beneficiary a position as Business Development Manager effective upon completion of the training program. The letter is dated August 19, 2009, over six months after the present petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date 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 petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(4). For this additional reason, the petition may not be approved.

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.

The AAO incorporates its previous discussion regarding the vague and generalized description of the training program contained in the record, particularly regarding the rotational assignment portions of the training. In addition, when the petition was filed, the beneficiary was in the United States on a B-2 visa; however, she was employed by the petitioner as indicated in the petitioner's quarterly wage reports. An alien present in the United States in B-2 status is not authorized to accept employment. It appears that the trainee will receive training but she will also be engaged in productive employment. Furthermore, without additional information regarding what the beneficiary will actually be doing on a day-to-day basis, the AAO concludes that she 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 she 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).

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(F), the petitioner's proposed training program is designed to recruit and train aliens for the ultimate staffing of domestic

operations in the United States. Again, the AAO agrees with the director since the beneficiary is currently employed by the petitioner. In addition, the petitioner stated in its letter, dated April 10, 2009, that the beneficiary “is in training to take on more of the management responsibility.” Thus, it appears that the petitioner wishes to continue to employ the beneficiary in its domestic operations. For this additional reason, the petition will be denied.

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 petitioner submitted a letter, dated April 10, 2009, that stated it has one managing general partner, one assistant, one cleaning lady and the beneficiary “who is in training to take on more of the management responsibility.” In the letter of support, dated December 17, 2008, the petitioner stated that “this one-of-a kind program will be taught by industry professionals.” However, the petitioner did not provide any evidence of the trainers for this program. In addition, the managing general partner will supervise the training program. It is not clear how the managing general partner can perform her workload while she is instructing the beneficiary during the 18 months of the training program that consists of 80 percent classroom instruction. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of this petition.

In addition, the director stated that the petitioner provided sufficient evidence to establish that it has the physical plant to provide the training program. The petitioner submitted photographs of its office which appears to be a small room with two desks and a round table with three chairs in the middle of the room. This same room is where the general managing partner and the assistant must perform all business operations. It is not clear how the trainers can train for eight hours for 18 months in one room which also serves as the office of the general managing partner and the assistant and not affect business operations, or affect the ability to get through the classroom instruction. For this additional reason, the petition may not be approved.

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. The petition is denied.