

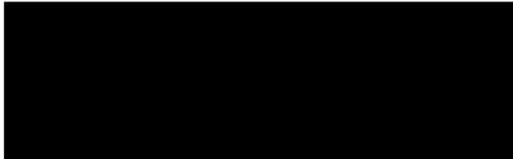
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 02 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:

SELF-REPRESENTED

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 retailer of coffee that seeks to employ the beneficiary as a trainee for a period of nine 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.

On May 18, 2009, the director denied the petition on two independent grounds: (1) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (2) 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 the supporting documentation, the petitioner stated that it is a “serious coffee business, operating the largest independent roaster-retailer on Long Island, NY.” The petitioner also stated that it is offering a new training program and described the program as follows:

The trainee program is tailored for entrepreneurs of any age, nationality or professional background experience, who, like us, see the great opportunities the coffee business has to offer. Like the exchange students, the trainees will also learn how to [make] great coffee drinks and perform quality customer service, but they will also learn how to train other people to do the same - and more; they will learn the entire process of coffee from bean to cup, choosing growers, roasting the coffee, setting up a regular or mobile store and marketing their product.

At the end of the program, the trainee will have all the tools necessary to start their own business back at their countries, with the option of using our brand but without having to pay the expenses of a franchise model, having complete freedom to design their own business based on the successful experience we have had at [the petitioner].

The petitioner provided a training outline that stated the duration of the training program is 6 months with an optional winter training of three months. In addition, the training will consist of on-the-job training and instruction for 40 hours per week. The training outline indicated that the last three months of training will only consist of instruction and the trainee will not have any on-the-job training. The topics of the training program are as follows: Barista 101 (Month 1); Customer Service (Month 2); Store Management (Month 3); Coffee Selection (Month 4); Coffee Roasting (Month 5); Mobile Unit (Month 6); Human Resources (Winter 1); Marketing 101 (Winter 2); and, Business Planning (Winter 3).

The petitioner stated the following as to whether similar training is available in the alien's country:

There is virtually no training available in Brazil that encompasses from selecting your own green beans, roasting them into a unique blend, preparing them into signature beverages, with special attention to customer service quality. All the coffee houses currently available in Brazil are franchises of big companies, and none of them have focus on specialty drinks. In Brazil, there is no training available that would include all that this trainee program has to offer. Customer services is also known to be an issue in her country, and [the beneficiary] is eager to learn how to reach a unique customer service that will differentiate her business from others from a successful US model.

On April 21, 2010, the director requested further information and evidence on the petitioner's H-3 training program.

In response, the petitioner again stated that this type of training is not available in Brazil. The petitioner stated that "there is indeed some training available in Brazil – but Brazilians commonly go to the US to get proper training." The director requested affidavits or declarations from recognized authorities attesting to the unavailability of the proposed training in the alien's home country but the petitioner did not present this evidence and stated that "no authorities in Brazil were available to give a declaration within the time frame of this request." The petitioner submitted six articles. The articles discussed how the coffee industry has expanded in several countries, including Brazil. Some of the articles are dated 2006, over five years prior to filing this petition.

On appeal, the petitioner contends that the training program is not available in Brazil because "there aren't any classes that encompass the entire process of coffee selection, roasting, preparing and marketing unless you buy a franchise." The petitioner also stated that "in order to fully experience the day-by-day and feel of an American coffeehouse, it is necessary to be inside the US territory, and that therefore there are no classes available in Brazil or in any other countries that are able to more than emulate the experience, and the opportunity of a full experience is the main appeal and differential of [the petitioner's] trainee program."

The petitioner also stated that the trainers of the program will be the company's owners, [REDACTED]. The petitioner further stated that "videos, one-on-one teaching, books and other materials still to be selected throughout the development of [the petitioner's] trainee pilot program will provide the trainee with the necessary knowledge." The petitioner also provided photographs of its facilities which included two stores, one mobile unit, and a roasting facility.

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 establish that the proposed training is unavailable in Brazil, the beneficiary's home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires a demonstration that the proposed training is not available in the alien's own country, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the petitioner to submit a statement which indicates the reasons why the training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States.

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 itself 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 stated above, the petitioner contends that there are no training programs in Brazil that encompass the “entire process of coffee selection, roasting, preparing and marketing unless you buy a franchise.” However, the petitioner did not provide any corroborating evidence to support this claim. The petitioner only presented articles from the internet that discussed the growth of the coffee industry around the world, including Brazil, but the articles do not mention any training programs, or lack thereof, relating to the coffee industry in Brazil. 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 specifically addressed this issue in her request for evidence and asked for further evidence to support the petitioner’s claim that the training program is unavailable in the beneficiary’s home country but the petitioner did not provide evidence as requested by the director. 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).

On appeal, the petitioner asserted that the goal of the training program is to provide the experience of working at a U.S. coffee house. The petitioner did not submit any corroborating evidence to support the claim that the trainee cannot find training in a “U.S. style” coffee house in Brazil. In fact, there are several American restaurants and coffee houses located in Brazil such as Starbucks, and businesses that cater to American tourists. 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 petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained from similar companies in the beneficiary’s home country. 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 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 two company owners. The petitioner also explained that it has two stores, a mobile unit, and a roasting facility. The petitioner explained that one store has 5 employees during the low season and 12 during the peak season, and the second store has 32 employees during the peak season from June to August. In addition, the petitioner requested the employment dates on the Form I-129 from June 1, 2009 until February 1, 2011, which will include the full peak season and part of the off season. It is not clear how the two owners that need to run two stores, a mobile unit and a roasting facility can perform their workload while they are instructing the beneficiary during the nine months of the training program that consists of 40 hours per week of classroom instruction and on-the-job training during its peak season and part of its off season. 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.

In addition, the director stated that the petitioner provided insufficient evidence to establish that it has the physical plant to provide the training program. The petitioner submitted photographs of its stores and the mobile unit. On appeal, the petitioner states that “a small conference area is being planned to hold meetings with the future trainees.” The petitioner also states that it has “an office area big enough to hold the instructional meetings, and a desk, computer and printer set up for the exclusive use of the trainee.” It is not clear how the trainee can receive hours of classroom instruction in the petitioner’s one office area which is the same room where the owners must perform all the administrative and operational duties and not affect business operations, or affect the ability to conduct the classroom instruction. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation. 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 eight month training program, but the petitioner’s outline of the program describes each phase in only a few sentences. In addition, the petitioner did not explain what the beneficiary will do during the on-the-job training. In addition, the petitioner noted that it is still working on a list of materials that will be utilized for the training program. The petitioner did not, therefore, provide any information of reading materials or a syllabus that will be followed during the program. In addition, the petitioner did not provide any information on how the trainee will be tested and evaluated using the reading materials. 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).

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 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.