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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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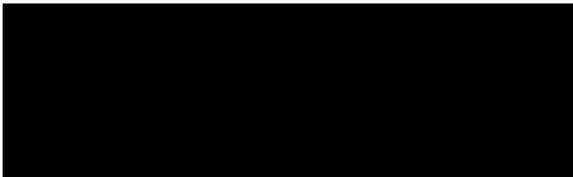
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

MAR 22 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 a country club that seeks to employ the beneficiary as an assistant in training for a period of three years. 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 four 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 beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training, and failed to establish 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; (3) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; and, (4) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. 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 petitioner's letter of support, the petitioner stated that it is a "family oriented private leisure and golf club, offering world class golf facilities to members and guests." The petitioner further stated that "in 2007, [the petitioner] initiated a large scale restoration of the golf course, with continued restoration projects to serve as valuable learning experience to our staff, AIT trainees, and interns to improve the quality of play at [the petitioner] for years to come." In addition, the petitioner explained that the beneficiary "will train in all aspects of golf course conditioning, testing and maintenance so that he may return to the United Kingdom after successful conclusion of the training to bring our state-of-the-art methods and technologies to the UK golf course maintenance systems." The petitioner also stated that the training program is not available in the United Kingdom ("U.K.") because "it is proprietary to our golf course, specific to our restoration projects, and specific to our designs, theory and practical golf maintenance techniques."

The petitioner submitted an executive summary and it further explained why the training is not available in the beneficiary's home country as follows:

Due to the Golf course management opportunities in the United Kingdom but the limited nature of turf management training systems in the United Kingdom, the assistant-in-training program created at our facility provides an opportunity not currently available in the United Kingdom, by putting into place both theory and practical training of turf management with the newest technologies in the U.S. Those who have earned turf management degrees, only offered in the United States, have the opportunity to continue their learning experience when they participate in an assistant-in-training program.

The executive summary also listed the different phases of the first two years of the training program¹ as follows: (1) Advanced Turfgrass Management for Summer Season (May 2010 through August 2010); (2) Advanced Turfgrass Management for the Autumn Season (September 2010 – November 2010); (3) Advanced Turfgrass Management for the Winter Season (December 2010 – May 2011); (4) Advanced Turfgrass Management for Spring/Summer Seasons (June 2011 – September 2011); and, (5) Advanced Turfgrass Management for the Winter Season (October 2011 – May 2012).

¹ The dates of intended employment shown at part 5 of the Form I-129 are May 20, 2010 to May 19, 2013.

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 director noted that the beneficiary had been admitted into the United States in a J-1 nonimmigrant visa and received 16 months of practical training in turf grass management. The director also noted that the beneficiary received an Associate's degree in Turf Grass Management at Horry Georgetown Technical College, located in South Carolina.

The petitioner submitted a letter from [REDACTED] Program Manager and Alternate Responsible Officer at The Ohio State University. The letter confirms that the beneficiary was an intern in The Ohio State University Intern Program from May 2006 until August 2007. During the program, the beneficiary was placed with the petitioner for six months and "he was trained on how to manage staff, Calibrate, and spray essential chemicals, and trained on all aspects of golf course management," and he was "also trained on how to prepare a golf course to the highest level." The author also stated that the beneficiary was placed at Harbour Town Golf Links in Hilton Head, South Carolina, where "he received further training on how to prepare a golf course for PGA tournament, (The Verizon Heritage)." Moreover, the author stated that "we are confident that the 16 months of experience and intensive training in The Ohio State University International Intern Program has enabled [the beneficiary] to apply for any position in golf course management around the world."

In response to the director's request for evidence, the petitioner submitted a second letter from [REDACTED] Program Manager and Alternate Responsible Officer at The Ohio State University. The author explained the difference between the J-1 program, completed by the beneficiary, as compared to the H-3 training program offered to the beneficiary as follows:

While our program offered through the Department of State's J-1 International Exchange is a training program in the field of golf course management, our brief intern program does not fully train/prepare an individual to be a Superintendent or even Assistant Superintendent of a golf course facility to meet the demands that are expect[ed] at High end courses today.

Our J-1 training program is a beginner course to recognize golf course management issues, provide brief stints of interaction and to meet and learn from Superintendents and turfgrass agronomists in the industry.

The author does not note whether he reviewed the petitioner's H-3 training program to determine that it indeed differs from the training the beneficiary received while working with the petitioner for 6 months as a J-1 nonimmigrant. The extent of his knowledge of the proposed training

program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his assertions. In addition, [REDACTED] second letter contradicts his first letter submitted with the petition that stated, "we are confident that the 16 months of experience and intensive training in The Ohio State University International Intern Program has enabled [the beneficiary] to apply for any position in golf course management around the world." 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).

On appeal, counsel for the petitioner asserts that the "beneficiary has only met the minimum requirements for being accepted into an AIT program by gaining his associate's degree and J-1 internship completion." However, the petitioner did not submit any documentation or information about the training the petitioner previously received for six months with the petitioner and did not explain in detail how that training differs from the H-3 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 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 failed to demonstrate 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 petitioner submitted an executive summary that explains the time utilized for classroom instruction and hands-on training for each phase of the training program and as noted by the director, the majority of the training program will consist of hands-on training. In addition, the executive summary lists the training goals and tasks for the petitioner's H-3 program which appear to be work duties and not just training goals. For example, the beneficiary will "oversee and coordinate the chemical application and calibration process of the department;" "keep accurate inventory of chemicals and fertilizers;" "ensure that all operators of spray equipment are following the processes set forth by [the petitioner's] management;" and, "assist in the mentoring and scheduling our staff, refine quality and safety manuals and in-house review procedures for training on equipment, and manage interns and other staff to produce championship results in accordance to our statement of purpose." In addition, the petitioner submitted a vague description of the first 24 months of the training program and it is not clear what the beneficiary will actually do for his hands-on training. Thus, with a vague description of the day-to-day

activities performed by the beneficiary, and a list of goals and tasks for the training program that appear to be productive employment rather than training phases, 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 noted that the petitioner failed to establish that the proposed training could not be obtained in the United Kingdom, the beneficiaries' 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.

In response to the director's request for evidence, the petitioner submitted three letters as evidence that the training program is not available in the United Kingdom. The first letter is by a Professor in Turfgrass Science at The Ohio State University that states, "[the beneficiary] has the opportunity to get intense agronomic/golf course management training at [the petitioner] in Cleveland Ohio that I believe is not readily available in the United Kingdom." The author further stated that the "club is ranked as one of the top golf courses in Ohio and in the nation due in part due to the high quality turf standards achieved." As noted by the director in her decision, the author of this letter does not provide a reason for his belief that this training program is not available in the U.K. 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 submitted a second letter by [REDACTED] Group Course Manager at The clubcompany that was not signed by the author. The AAO will not use this unsigned letter as evidence.

The third letter is from [REDACTED], Program Manager and Alternate Responsible Officer at The Ohio State University. The author stated that "these golf courses [including the petitioner] maintain their courses to the highest standards for golf course maintenance and have facility budgets that dwarf similarly sized courses in the U.K." The author further stated that he has spoken to several Superintendents of golf courses in the U.K. that stated that this training is not available in the U.K. The author does not describe the petitioner's training program in any meaningful fashion. The extent of his knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his assertions. Nor has the author submitted any industry data or other information to support any of his opinions. Thus, 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 United Kingdom. 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 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.

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 divided into five phases. Although the petitioner submitted a training outline with topics to be discussed in each phase, the descriptions consist of only a few sentences. The beneficiary will participate from 25 to 55 hours of field training per week but the petitioner did not explain what duties or activities this will entail. The beneficiary will also receive classroom training but the petitioner did not provide a syllabus of daily topics and assignments. Although the petitioner submitted five books that will be studied during the training program, it failed to explain how the materials will be utilized in the program.

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. Furthermore, in reviewing the skills to be imparted for each phase, it appears that several of the skills are repetitive. 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 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.