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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



U.S. Citizenship  
and Immigration  
Services

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85

DATE: **MAY 06 2011** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiaries:

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 self-growth educational and spiritual services and seeks to employ the beneficiary as a Keepership Trainee for a period of two 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 intent to deny; (3) the petitioner's response to the director's intent to deny; (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 two grounds: (1) the petitioner failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and, (2) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of 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;
    - (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 June 9, 2010, the petitioner's owner explained its operations and the reason for offering the training program as follows:

I am [REDACTED] in my world. I am the owner of the [REDACTED] and [REDACTED] is to make sure that this tradition stays in the world, and that it is available to all humans. I am one of only three [REDACTED] of this particular tradition in the world. For a very long time our Spiritual Tradition was held mostly within the tribes of [REDACTED] and before that [REDACTED], and not carried out into the world. My Elders opened this tradition to all humans and together with them over the last 25 years we have created a large People that is deeply committed to the wisdom of the Delicate Lodge Teachings. Part of [REDACTED] responsibility is to make at least one more [REDACTED] to take the place before he or she dies. The only way to become a [REDACTED] of our tradition is to serve an apprenticeship.

[The beneficiary] is my one and only apprentice. What this relationship means is that [the beneficiary], in a sense, 'gives himself' to this bundle of knowledge and lives with his teacher and does his learning over a period of years by assisting in all that his teacher is doing and being educated in all these things through the wisdom of this way. My apprentice is expected to assist in all the things I do ceremonially and in holding circles of people in their medicine journeys, as well as to learn all that I can teach him so that he can replace me as a [REDACTED] of the Delicate Lodge some years down the road.

On the Form I-129, the petitioner stated that it does not intend to employ the beneficiary abroad at the end of the training program. The petitioner stated that the beneficiary is "expected to serve as a Keeper of our tradition in Europe, so I do not have to travel abroad as often as I do now."

The petitioner submitted an outline of the training program. The outline described the activities and daily schedules for the training program as follows:

*Personal Development* is practiced daily and consists of yoga exercises, meditation and prayers, as well [as] deep study of personal tools and concepts from the Delicate Lodge Teaching Bundle.

*Management* includes studying of how to plan and create specialized programs for groups and individuals in the areas of personal development, leadership and community council; building programs in the US and Europe. Management also includes studies of how to build, maintain and operate a Healing Center.

*Communication* includes practicing translation and interpretation of the concepts, tools and glyphs to Danish, building and maintenance of websites, email and forum communication with the followers, as well as study in how to adapt the ancient traditions into a contemporary way of living without giving up the essentials and the deep respect and connection to all living things.

*Teachings* include planning and preparing of teaching ceremonies, learning how to teach and guide people individually and in groups.

*Workshop* preparation includes planning of the workshop, study of the materials, preparation of the venue.

*Workshop Preparation* including participation in all ceremonial and teaching activity during workshops at Star Dance and occasionally at other venues.

The petitioner also submitted a statement from the beneficiary outlining his prior training and experience in the Delicate Lodge Teachings. The beneficiary participated in a two-year training program in Denmark, a 5 day follow-up workshop in Denmark, a 10 day introduction workshop to Black Lodge training in New Mexico and a 2-year advanced training program called Black Lodge. The beneficiary stated that "all the training I received is a basic level training available to almost anybody." The beneficiary also stated that he wishes to train to become a Keeper with Diana Schmidt who is located in New Mexico.

On June 25, 2010, the director sent a request for additional evidence. In a response letter dated, July 20, 2010, counsel for the petitioner stated that the training is not available in Denmark "for a simple reason that there are only three Keepers in the world, and all three reside in the United States," and two out of the three Keepers are "no longer providing keepership training." Counsel also explained that the means of evaluation for the training program is for Doorway evaluations which are "4 day long exams conducted to test Beneficiary's attainment of 4 different levels of knowledge."

The petitioner's owner submitted a letter dated July 14, 2010, that stated the beneficiary will study through practice "so the daily living, daily assisting me in ceremonial work and healing work with others, and the daily routines of assisting me in all the matters I must deal with provide that training ground." The petitioner's owner also explained that she will constantly evaluate the beneficiary and the beneficiary will need to pass tests to achieve different levels of knowledge.

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 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 will include personal development, management, communication, teachings, workshop preparation and workshop participation. The petitioner provided a calendar for the two years describing the activities to be performed each day. However, the activities are explained in one sentence and the petitioner does not clearly explain what duties the beneficiary will need to perform for each activity. In addition, the petitioner stated that two thirds of the training program will consist of classroom instruction but the petitioner does not explain in any detail of what that will entail. The petitioner did not present a syllabus of topics that will be studied or materials that will be utilized during the classroom instruction. 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 take exams but it is not clear on what the beneficiary will be tested since the training program outline provides only 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. Thus, the beneficiary has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A).

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.

In the director's denial decision, she noted that the beneficiary previously attended several workshops by the petitioner. According to the letter submitted by the beneficiary, he participated in a two-year training program in Denmark, a 5 day follow-up workshop in Denmark, a 10 day introduction workshop to [REDACTED] training in New Mexico and a 2-year advanced training

program called [REDACTED]. The beneficiary stated that “all the training I received is a basic level training available to almost anybody.” The beneficiary also stated that it wishes to train to become [REDACTED], who is located in New Mexico.

On appeal, counsel for the petitioner states that the beneficiary “needs to train in a form of apprenticeship for several years before he can obtain the knowledge and skills necessary for a position of a Keeper.” The petitioner also submitted a letter from [REDACTED] of the Origin Teachings of the [REDACTED] and the Founders and Directors of [REDACTED]. In that letter, the founders stated that “all trainees must live and apprentice with her in order to be authorized to [REDACTED] of the [REDACTED] and to carry and share the teachings of the [REDACTED].” The petitioner also explained that the type of experience held by the beneficiary has been at the basic level and has not reached the level of master. The AAO will withdraw this issue in the denial.

Beyond the decision of the director, 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).

On the Form I-129, the petitioner stated that it does not intend to employ the beneficiary abroad at the end of the training program. The petitioner stated that the beneficiary is “expected to serve as a Keeper of our tradition in Europe, so I do not have to travel abroad as often as I do now.” In response to the director’s request for evidence, counsel for the petitioner stated that upon completion of the training program, the beneficiary can “offer [REDACTED] programs in Europe, to keep the tradition alive by practicing it, and to offer it to other people who are drawn to it in forms of workshops, one-on-one sessions, talks, seasonal ceremonies, etc.” Since the petitioner will not employ the beneficiary, and the training program will teach the beneficiary the petitioner’s specific practices and teachings, it does not appear that the beneficiary will find employment abroad. Since the petitioner will not employ the beneficiary, it appears the beneficiary will need to volunteer his services and thus, the training program will not benefit the beneficiary in pursuing a career abroad. The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4).

Beyond the decision of the director, the petitioner 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's owner stated that she will be the trainer of the program. The petitioner also submitted a list of events and locations for 2010, 2011 and 2012. According to the events, it appears that the petitioner will provide several workshops abroad. It is not clear who will train the beneficiary during the weeks the owner is abroad for events. In addition, it is not clear how the owner, who has no employees, can provide several workshops abroad in different sites in the United States, while instructing the beneficiary during the two years of the training program that consists of two thirds of classroom instruction. 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.

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.