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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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DATE: **MAY 12 2011** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

[REDACTED]

**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 horse racing and it seeks to employ the beneficiaries as horse groom and trainer trainees for a period of one year. 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 the following grounds: (1) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the training; (2) the petitioner failed to establish that the proposed training is unavailable in the beneficiary's home country; (3) the petitioner failed to demonstrate that the training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States; (4) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; and, (5) the petitioner failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States. 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 a letter of support, dated April 24, 2009, counsel for the petitioner stated that the petitioner seeks to bring the beneficiary trainees from Mexico and Kenya "to train in the most sophisticated and advanced equine training program in the world – [REDACTED]" Counsel also stated that the training program offered by the petitioner is "unlike any other training program in the world," since it "provides the most up-to-date and sophisticated horse techniques to grooms and trainers." The petitioner submitted several letters in support of this claim. Furthermore, counsel contends that the training program is unique to the petitioner and can be received only from the petitioner.

Counsel also stated that the [REDACTED] has evolved from a 6-week crash course to the full 52-week program currently offered." Counsel also stated that "tuition paid by beneficiaries will enable [REDACTED] to make this critical front line training available to every groom in this country." Counsel's explanation for the reason the petitioner is offering this program to the beneficiaries is as follows:

It will broaden the international affiliations and cooperation between American and international horse breeders by establishing a uniform basis of quality control and enrichment for trainers which at the same time provide an important source of scholarship funds from international trainee tuition fees that will be dedicated exclusively to providing free training to American Citizen Trainees.

The petitioner stated that "the training program is a mixture of in-class instruction and supervised on-the-job training using applied instruction through active participation in hands-on activities and practical experience lessons." The petitioner submitted the Master Course Book for the H-3 training for the Groom Elite Certification, and a Spanish Language course instruction book.

On May 19, 2009, the director sent to the petitioner a request for additional information to establish the petitioner's eligibility for H-3 nonimmigrant status.

In the response letter, counsel for the petitioner noted that the "Jockey Club Fact Book lists approximately 60 countries where horseracing takes place," and that individuals who complete the [REDACTED] are "certified to work in other equine industries including jumping (an Olympic equestrian event), tourism, and breed farms." In addition, counsel stated that the

██████████ H-3 Training Program is a bona fide training program established to train foreign grooms to raise the level of expertise for foreign grooms." The petitioner submitted several letters from individuals in the horse industry stating that the training program will assist the trainees in obtaining a job upon return to their home countries.

In response to the director's request for evidence, the petitioner submitted a letter from ██████████ ██████████ and ██████████ the ██████████ ██████████, who further explained the importance of the training program as follows:

The ██████████ played a key role in the development of ██████████ which through its ██████████ curricula has established extension training programs for horse handlers across the country. It was the intent in creating the program to develop a training program that was unlike any other in the world.

\* \* \*

Trainees learn new skills rather than merely enhancing existing skills. Trainees are then given the opportunity to apply the knowledge in a real life setting under the supervision of a ██████████. Further, trainees then are provided on-the-job training so that the skills and techniques taught in the courses can be mastered in a live stable setting. Any work is on-the-job training, incidental to the training program and is necessary because the subject matter of the training program by its very nature can only be learned under real life conditions.

The director noted in the request for evidence that several of the beneficiaries were previously employed in H-2B status and, thus, may have already received the skills and experience that will be part of the current training program. The director requested further information about the job duties the beneficiaries had when they were in the U.S. in H-2B status but the petitioner did not submit this documentation. 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).

In response to the director's request to provide evidence that the training program will provide the beneficiaries with knowledge and skills that are substantially different from what they have obtained from any prior experience working with horses, the petitioner submitted a letter from ██████████ the executive director of the training program. ██████████ stated that "experience working with horses does not imply that grooms have been training in their tasks," and further stated that "the only 'qualification' for a person to be a groom of racehorses is the ability to have someone say, 'Groom at stable gate looking for work.'"

In addition, counsel contends that the trainees will not undergo productive employment. Specifically, counsel stated the following:

On-the-job training is necessary for grooms to pass the practical exam. Trainees cannot appreciate the size and strength of racing and other performance horses until they experience it in a real life setting. In addition, practice in actual competition settings also provides information to researchers regarding the efficacy of prescribed training methods and grooming routines. By giving the beneficiaries the skills necessary to pass the written and practical exam to become an assistant trainer, the beneficiaries will greatly enhance their chances of obtaining gainful employment upon their return to their home country.

The petitioner submitted an outline of the training program with the topics to be discussed during each week of the program.

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 classification sought.

The director found that the petitioner had not established that the beneficiary would not engage in productive employment. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires the petitioner to establish that the beneficiary would 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 the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a petition in which the beneficiary would perform productive employment beyond that which is incidental and necessary to the training.

On appeal, counsel for the petitioner stated that the "intent of the program, however, is to thoroughly train grooms in advanced paraveterinary and groom techniques." Counsel further stated that "training people to work with horses requires an extensive amount of skill training to go with classroom." Counsel gave an example of the task of putting a halter on the horse "can be taught in a classroom in 15 to 30 minutes and demonstrated in another 30 minutes" but the groom must practice this and that may require over 30 to 40 hours." Furthermore, counsel stated that the "trainees receive on-the-job training to become proficient in the proper technique and methods of handling performance horses."

The AAO agrees that the petitioner's training will require hands-on training but the information is not sufficient to determine if the trainees will perform productive employment. The petitioner submitted an outline of the 12-month training program, but it did not state the breakdown of time of classroom instruction and on-the-job training. Thus, the petitioner did not present any evidence of how many hours the trainee will receive on-the-job training. In addition, the petitioner never explained what the on-the-job training consists of during the one-year training program. Without any information of what the trainees will need to do during the on-the-job training, it is impossible to determine that the trainees will not perform productive employment. 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 concluded that the petitioner failed to establish that the training is not available in the aliens' home countries. 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 petitioner submitted several letters from authorities within the horse industry stating that the type of training offered by the petitioner is not available abroad. Some letters were specific to the horse industry in Mexico, Guatemala and Nicaragua. In reviewing the letters submitted by the petitioner, the authors of the letters do not note the location of the petitioner, nor indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor do they describe the training program in any meaningful fashion. The extent of their knowledge of the proposed training program is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of the pronouncements made by the authors and these submissions are therefore not probative of any of the criteria at issue here. Nor have the authors submitted any industry data or other information to support any of their opinions.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In addition, the petitioner submitted statistics on ownership of American Quarter Horses in each state and country. The Executive Director of Racing for the American Quarter Horse Association noted that "internationally, [the association] has 34 recognized affiliates, almost 22,000 members and over 128,000 registered horses." According to this data, several countries have horses that need grooming and positions as horse groomers, especially since this data only deals with American Quarter Horses and not all breeds of horses. Thus, it is not clear how the training provided by the petitioner is not available abroad in countries that have their own horses that require grooming. In addition, in reviewing the materials for the training program, the topics appear to be generalized topics on horse grooming and none of the information appears unique or specific to the petitioner, thus, the petitioner has not established that its business practices are so unique and specialized that such knowledge could not be obtained in Mexico or Kenya. The petitioner has failed to demonstrate that the proposed training could not be obtained in the beneficiaries' home countries. 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 demonstrate that the training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. On appeal, counsel for the petitioner states that the petitioner's main goal is to train U.S. citizens and is offering the training program to nationals of other countries so the "tuition paid by foreign beneficiaries will offset the cost of training US citizens." Thus, counsel contends that the

mission of the training program is not to recruit and train aliens for the ultimate staffing of domestic operations in the United States. However, as noted above, the petitioner proved a very vague description of the on-the-job training that will be provided to the beneficiaries; thus, it is impossible to determine the ultimate goal of the petitioner in providing this training program.

The director also 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.

As noted above, the director noted in its request for evidence that several of the beneficiaries were previously in the United States in H-2B nonimmigrant status. The director requested information of the job duties performed by the beneficiaries and the name of the petitioner's that employed the beneficiaries in H-2B status. In the response letter, the petitioner failed to provide any documentation in response to this inquiry. 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). Thus, the petitioner has not shown that the beneficiaries' do not already possess substantial knowledge and skills in the proposed field of training.

The director also concluded that the petitioner did not establish that the training program will benefit the beneficiaries in pursuing a career abroad. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiaries in pursuing a career outside the United States, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the aliens.

With regard to the beneficiary's career abroad, the petitioner stated that the demand for horse groomers is high in the beneficiaries' home countries. The petitioner also submitted support letters from professionals in the horse industry that indicate the need for horse groomers is international. Thus, the petitioner provided sufficient evidence to overcome this issue of the director's denial.

Beyond the decision of the director, 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 12-month training program that is divided into several phases that are explained in a few sentences and does not explain what the beneficiary will be doing in detail for months at a time. In addition, much of the training is general to horse grooming and the outline does not specify how

the beneficiary will be trained in the petitioner's specific business practices. 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).

In addition, the petitioner did not provide a clear explanation of how the beneficiary will be evaluated throughout the training program. The petitioner stated that the beneficiary will take an exam 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.

Furthermore, there are several inconsistencies in the record regarding the length of the training program. The petitioner submitted an article from [REDACTED], dated May 16, 2001, stating that the [REDACTED] is a "ten-week bilingual course designed to teach stable-area employees horse handling skills." The petitioner also submitted an article from post-gazette.com, dated October 5, 2003, that discusses an individual that took the training and stated it was a "30-hour certificate program for grooms that the local Horsemen's Benevolent & Protective Association offered this summer." In addition, the petitioner's website page indicates that the petitioner has three training courses: Introduction to grooming; [REDACTED] and [REDACTED]. The petitioner's website states that the Introduction to Grooming is a "16 hour short course," and [REDACTED] is an "extensive 40 hours course." The director also noted the inconsistencies regarding the length of the training program in her denial decision; however, the petitioner did not provide sufficient evidence to overcome the director's concerns. 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).

It is noted that in several parts of the response letter, counsel for the petitioner stated that the training program is a two-year program. In addition, the petitioner submitted evaluation forms that indicate the program is a two-year training program.

The petitioner noted that United States Citizenship and Immigration Services ("USCIS") approved other petitions that had been previously filed on behalf of the petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to

approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.