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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
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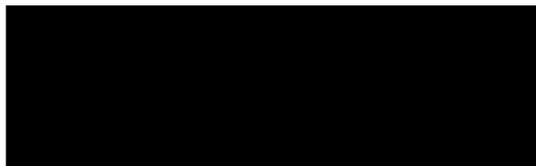
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 17 2011

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 deli franchise that seeks to employ the beneficiary as an Area Developer-Middle East Trainee for a period of ten 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 is unavailable in the beneficiary's home country; (3) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; and, (4) that the petitioner had 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 its letter of support, dated December 14, 2009, the petitioner stated that it “became an immediate success and our franchise operations are an ideal concept for cities in North America and abroad.” The petitioner also stated that it is “focusing on expanding our franchises abroad specifically in the Middle East.” In addition, the petitioner explained that it has a 10 month training program “designed to teach an individual on the operation of our store as well as developing and expanding our concept in a new market.”

The petitioner submitted a training program outline that stated the program is divided into five main segments: (1) Single Unit Operation; (2) Development; (3) Franchising; (4) Marketing; and, (5) Finance. The outline also listed the overall objectives of the training program as follows:

- Understand full operation of [the petitioner’s] franchise;
- Learn all the specifications of the products used at [the petitioner] and their suppliers;
- Learn our procedures for site selection and lease requirements;
- Learn the governing laws in franchising;
- Learn our methods of attracting potential franchisees and marketing;
- Learn about our construction requirements and the build-out;
- Learn about our designs, equipment and furniture requirements;
- Learn the required accounting and record keeping; and
- Learn about available financing for the potential franchisees.

On January 28, 2010, the director requested further evidence documenting eligibility for the H-3 nonimmigrant visa. In a response letter, dated February 24, 2010, the petitioner stated that the training program will “focus on three objectives: (a) learning hands-on the steps necessary to open and operate a successful [the petitioner’s] franchise; (b) learning the national characteristics of consumer markets in the Middle East region; and (c) adapting the resources in those markets to meet the needs of a successful [the petitioner’s] franchise.” The petitioner also explained that “several investors have approached [the petitioner] to propose joint development of franchises in the Middle East.” The petitioner further stated that “franchise development in the Middle East differs drastically from the United States. As shown by the table below, the number of procedural steps, delays, cost and capital required to start a business in the Middle East far exceed what is required in the U.S.”

In addition, the petitioner stated that upon completion of the training program, the beneficiary will work in Dubai for the petitioner and will be responsible for establishing “contacts with local entrepreneurs, investors, and government officials;” “find, recruit, and screen potential franchises and joint venture partners for [the petitioner’s] operations;” and, “will be in charge of training and qualifying the first operators.”

The petitioner also submitted with the initial filing and in response to the director’s RFE, several documents regarding to the petitioner’s business operations such as marketing materials, the operations manual, the franchise disclosure document and financial documents.

On appeal, counsel for the petitioner contends the petitioner has a well-established training program since “part of opening [the petitioner’s] franchise requires the franchisee to attend the training program designed to educate and train the individual on how to run [the petitioner’s] franchise.” Counsel also states that the training is unavailable in the beneficiary’s home country because the petitioner does not have any offices or training facilities outside of the Houston, Texas area. Counsel further states that the petitioner “is providing concrete evidence of the plans to sell its franchises to Middle East buyers,” with emails between [redacted], the Vice President of Finance for [the petitioner], and potential buyers in the Middle East.

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 demonstrate that it has an established training program, and 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. The training outline 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 10 month training program but the petitioner’s outline of the program consists of a few pages with brief descriptions of the topics for each week. In addition, the petitioner stated that the training program will consist of 80 percent classroom instruction; however, the petitioner 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 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 stated that the training program will train the beneficiary on how to open a franchise in the Middle East; however, the petitioner has never opened a franchise in the Middle East and there is no evidence that the petitioner has experience and can actually provide training in opening a franchise in the Middle East. In fact, it appears that much of the program will consist of the beneficiary learning the new market and developing a strategy for the petitioner to open in a new market. For example, the subjects of the training program include, "rules and regulations regarding food establishments in the regions;" "identify real estate brokers in the region;" "lease negotiations, identify regional restrictions;" "research international Franchise laws;" "determine the tentative cost of stores in the target regions," "prepare the agreements necessary to sell franchise locations in the target regions;" "website design and marketing, designing a site for the international market;" and "prepare proposals for banks in the regions and establish contacts." The petitioner did not submit any materials of these topics which indicate that they have already studied the market region and are prepared to train the beneficiary in these topics. Instead, it appears that the beneficiary will work with the petitioner to do the actual market studies and proposals for opening a franchise abroad. Thus, the beneficiary is not receiving training by the petitioner but instead is working with the petitioner to provide a business proposal for starting franchises abroad. As stated by the petitioner, "franchise development in the Middle East differs drastically from the United States," but the petitioner does not present evidence that it has knowledge of opening a franchise in the Middle East or that it can train the beneficiary in opening a franchise in the Middle East.

The director also noted that the petitioner failed to establish that the proposed training could not be obtained in Iran, the beneficiary's 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.

The AAO notes that 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 offers this training in the alien's home country; 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 noted above, the petitioner stated that the training is not available in Iran since the training program is to learn the specific operations of the petitioner and it does not have training facilities or franchises abroad. In reviewing the training program, part of the program discusses the specific operations of the petitioner; however, the majority of the training program deals with general concepts of opening a franchise in the Middle East. The petitioner did not submit evidence to establish that restaurant franchises do not exist in Iran. The petitioner has not established that its business practices are so unique and specialized that such knowledge could

not be obtained from similar companies. 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 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, he noted that the beneficiary received several degrees in finance and business and stated that "it appears the beneficiary already possesses substantial training in the proposed field of training, particularly Finance which encompasses eight weeks of the training." In reviewing the training program, although several weeks of the training program will consist of finance training, the training will be specific to the petitioner's operations. In addition, the training consists of learning how to open a franchise in the Middle East, which is an area in which the beneficiary does not have experience. The AAO will withdraw this portion of the decision.

The director also concluded that the petitioner did not establish that the training program will benefit the beneficiary 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 beneficiary 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 alien.

With regard to the beneficiary's career abroad, the petitioner stated that when the beneficiary completes the program, the petitioner will offer him a job as an area developer and the beneficiary will work in Dubai for the petitioner and will be responsible for establishing "contacts with local entrepreneurs, investors, and government officials;" "find, recruit, and screen potential franchises and joint venture partners for [the petitioner's] operations;" and, "will be in charge of training and qualifying the first operators."

The petitioner has failed to establish that there in fact exists a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. 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 his newfound knowledge would be for the petitioner. However, the record does not indicate that the petitioner has any business operations in Dubai. The petitioner stated that the beneficiary will help open a branch office. On appeal, the petitioner submits an email from the petitioner's Vice President of Finance to a [REDACTED] stating that the petitioner will send [REDACTED] a draft proposal and a presentation. The petitioner also submits a letter from the petitioner to [REDACTED] that authorizes him to serve as exclusive agent for and on behalf of the petitioner. The documentation evidences that the petitioner is attempting to start a franchise in the Middle East but it appears to be at the very beginning stages of this process. 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 setting in which the beneficiary would utilize his skills would be for the petitioner in Dubai, the petitioner must document that it actually has plans to commence operations in Dubai upon completion of the training. The petitioner failed to present any evidence that it can open a franchise in Dubai such as a business proposal, financial statements indicating that it has the finances to open a franchise in the Middle East, a possible retail location, a contract with an investor in Dubai to open a franchise, and/or, documentation that the petitioner's franchise is allowed in Dubai. 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 satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(4).

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.