

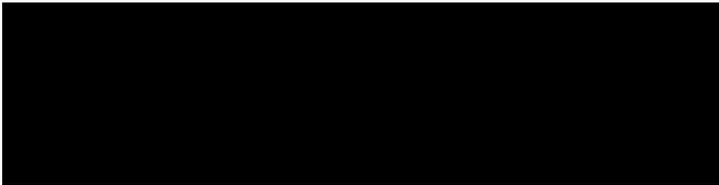
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



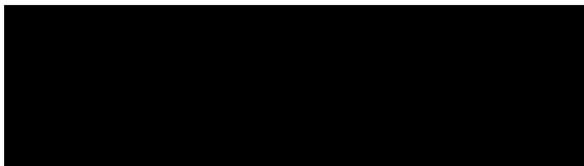
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DATE **FEB 14 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry 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 petitioner is engaged in international wedding services and it seeks to employ the beneficiaries as Wedding Management Trainees for a period of three months. The petitioner, therefore, endeavors to classify the beneficiaries as a nonimmigrant worker trainees 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 is unavailable in the beneficiary's home country; (2) the petitioner failed to establish that the beneficiary does not already possess substantial knowledge and skills in the proposed field of training; (3) the petitioner failed to establish that the proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (4) the petitioner failed to establish that the beneficiary would not engage in productive employment unless such employment is incidental and necessary to the 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.

On the Form I-129, the petitioner explained the training program as follows:

Trainees are current employees with [the petitioner's] parent [REDACTED] in [REDACTED]. The 3-month management training is designed for a career advancement to the management level within the company. [REDACTED] is a Japanese wedding company specialized in overseas wedding. It is important that future managers of the company have exposure in the company's subsidiary in the U.S., where most of the weddings take place. One of the trainees, . . . was a trainee in a separate 3-month wedding coordinator program in April.

The petitioner also stated on the Form I-129 that it's "business endeavors in Guam aim not only to expand our international wedding services to Guam, but also serve as a training place for trainees from Japan who after completion of the training program, will be employed in our affiliates outside the United States."

The petitioner submitted four articles that discuss how some Japanese couples choose to have their wedding ceremonies abroad.

The petitioner submitted a training program outline that stated the program is divided into four main segments: (1) Wedding (Basic Knowledge and Skill Practice); (2) Management Operations (Organizational Leadership, Marketing Strategy, Risk Management, Logistic Management, and Hotel Relations); (3) Guam Tourism (History, Culture, Tourist Spot, and Activities); and (4) Administrative (Facility Management, Inventory Management, Cost Management, Accounting and Human Resources). The petitioner also submitted a schedule of when each individual trainer will train the beneficiaries and when tests will be given throughout the program. In addition, the petitioner submitted a training evaluation worksheet.

The petitioner also submitted the training materials for the 2011 training program. Most of the training materials are in Japanese and not translated into English. The materials that are in English are a type of checklist of duties required by the wedding coordinator on the day of the wedding.

The petitioner's parent company provided the goals of the training program as follows:

1. Understand the management operations of [the petitioner].
2. Learn the duties and responsibilities of branch operations abroad.
3. Coordinate with the chief wedding planner of the company.
4. Learn how to communicate to customer service relations effectively.

5. Coordinate with employees in the preparations of the companies' wedding services (i.e. Chapel arrangement, Pastoral arrangement, Flower arrangements, Photo and video arrangements, transportation and catering services).
6. Coordinate with hotel managers on contract negotiations and improvements of the wedding salon.
7. Understand the planning and development programs, budgeting, and services according to the needs of the customer.
8. Ensure that wedding services are in compliance with the regulations and laws of the Territory of Guam.
9. Learn the cost management and cash management operations of the wedding salon.
10. Review the appropriate fees and payments with accuracy.
11. Learn the responsibility of recruitment and arrangement of training employees locally.
12. Understand the needs of employees (i.e. salary, medical and dental benefits, etc.).

The petitioner also submitted three letters of support stating that this training program is not available in Japan.

On August 26, 2011, the director requested further evidence documenting eligibility for the H-3 nonimmigrant visa. In response, the petitioner re-submitted the training materials and the letters provided previously to support the claim that the training program is not available in Japan. Counsel for the petitioner also stated that the Beneficiaries "will not engage in productive employment," and that they will "indeed participate in certain on-the-job training; but these activities are for training purposes only under the direct supervision of the trainers."

The petitioner also submitted the professional experience of each beneficiary with the foreign parent company in Japan. One beneficiary was employed with the foreign company as a wedding coordinator and planner; and the second beneficiary was employed by the foreign company as a wedding trainee and planner.

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 noted that the petitioner failed to establish that the proposed training could not be obtained in Japan, 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 Japan since the parent company in Japan is a “Japanese wedding company specialized in overseas wedding,” and the petitioner indicated that it is “important that future managers of the company have exposure in the company’s subsidiary in the U.S., where most of the weddings take place.”

The petitioner also submitted three letters of support. The first letter is from the president of [REDACTED] Inc. The author stated that this training program is not available in Japan since the program is for the petitioner’s “employee(s) in Japan to come to Guam to study and learn the wedding services being provided abroad, management operations, administrative functions, the latest wedding trends, and Guam’s tourism.”

The second letter is from [REDACTED], “the pioneer in providing wedding services internationally, and the leader in overseas wedding services.” The author stated that the training program is not available in Japan because “it is concentrated on the operations of overseas wedding services of the company.”

The third letter is from the Director of Human Resources for [REDACTED]. The author stated that the training program is not available in Japan. The author also said that “upon completion of this training, these individuals shall return to Japan on the date assigned by U.S. authority and apply all pertinent trainings conducted during this time to [the parent company], its parental company in Japan.”

In reviewing the letters, an adequate factual foundation to support these opinions has not been established. The authors do not indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor do the authors 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 their pronouncements and this evidence is therefore not probative of any of the criteria at issue here. Nor have the authors submitted any industry data or other information to support their opinion. The petitioner did not submit sufficient evidence to corroborate its claim that the training program is not available in Japan. 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 admissibility of and weight to be accorded expert testimony may vary depending on such factors as the extent of the expert's qualifications, the relevance of the testimony, the reliability of the testimony and the overall probative value to the specific facts at issue in the case. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011)(citing Fed. R. Evid. 702); *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”).

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 provided a vague training program that lacks specific details of the training program and fails to show whether the beneficiaries will be trained in topics that are specific and unique to the petitioner and are not available in a company that provides wedding services in Japan. 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, she noted that one beneficiary had already been in H-3 status with the petitioner from May 23, 2011 until July 5, 2011. In both the request for evidence and appeal, the petitioner contends that the beneficiary was previously trained as a wedding coordinator in H-3 status but asserts that training program differed from the current H-3 program. The petitioner did not provide any evidence to corroborate this claim. The petitioner did not present the training outline and materials for the previous H-3 program completed by the beneficiary to differentiate it from the current program. 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).

Both beneficiaries have experience as wedding coordinators with the parent company in Japan. The petitioner has not specifically identified the differences in the experience obtained by the beneficiaries working in Japan as wedding coordinator or planner and the training they will obtain with the current H-3 training program.

According to the training outline, the topics are very general such as wedding knowledge, administrative and management operations. Given that the beneficiaries have been working as wedding coordinators/planners, it is not clear why they need training in "wedding knowledge." It appears that the beneficiaries' already possess professional experience with wedding management. The petitioner has not provided sufficient evidence to establish that the training it will provide differs from the expertise the beneficiaries received by their professional background. 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)).

As the beneficiaries have professional experience in wedding planning and the H-3 training program submitted by the petitioner is very vague and does not explain how the training will differ from their prior experience, it appears that the beneficiary has substantial knowledge of this industry and does not require further training. The petitioner did not submit any evidence to establish otherwise, and the petition must be denied on this additional basis.

The director found that the petitioner failed to demonstrate 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 training outline submitted by the petitioner is vague in nature and leaves the AAO with very little idea as to what the beneficiary would actually be doing on a day-to-day basis. The program is a three-month training program but the petitioner's outline of the program consists of one page of four topics with a short explanation of the issues discussed in each topic. The petitioner did not provide a breakdown of time spent on classroom instruction and on-the-job training. The petitioner provided a training manual but the majority of it is in Japanese. Although the petitioner contends that the materials are too large to translate, the AAO cannot review materials that are in a foreign language. Since the petitioner failed to submit certified translations of the documents as required by 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Furthermore, the part of the training manual that is in English is a basic checklist of duties required of a wedding planner on the day of a wedding. The concepts appear to be typical of any wedding; the petitioner never explains how this training is unique to the petitioner.

The petitioner submitted a calendar breakdown of the three-month program with the dates of tests to be given to the beneficiaries but it is not clear on what the beneficiaries 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 beneficiaries, or materials that the beneficiaries will use in order to learn the topics to be discussed. 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 vague, generalized description of the training program does not explain what the beneficiaries 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. 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).

The director also found that the petitioner failed to demonstrate that the beneficiaries 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 that the beneficiaries 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 beneficiaries 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.

Without additional information regarding what the beneficiaries will actually be doing on a day-to-day basis, the AAO concludes that they may in fact 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 that they will engage in productive employment beyond that incidental and necessary to the training. 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 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.