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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

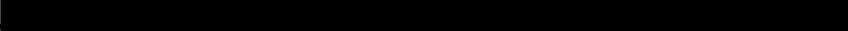


**U.S. Citizenship
and Immigration
Services**

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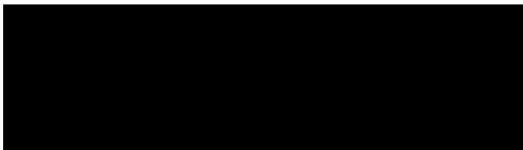


DATE: **JAN 03 2012** OFFICE: VERMONT SERVICE CENTER FILE: 

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 a “privately-owned broker-dealer of securities and provider of investment banking as well as corporate financial advisory services.” It seeks to employ the beneficiaries as stockbroker trainees for a period of one year. The petitioner seeks to classify the beneficiaries as 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 had failed to demonstrate that its proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States; (2) 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 (3) the petitioner failed to establish that the proposed training program would benefit the beneficiaries in pursuing a career abroad. 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 stated that the “program’s purpose is to train individuals to become licensed stockbrokers according to the laws that govern the Industry.” The petitioner also stated that “assignments abroad will be based on successful completion of the training program as well as an evaluation of company needs abroad,” and the petitioner “may choose to employ the trainees abroad as foreign associates.”

In its letter of support, dated March 29, 2011, the petitioner explained that both beneficiaries worked with investment companies in their home country “until the Venezuelan government decided to shut down all registered investment firms in the Country.” The petitioner provided an explanation of the goals of the training program as follows:

This program takes [the petitioner’s] core principles of individual and personalized service and applies them to an experience in which trainees are able to do all of the following: a) receive proper tutelage in studying to take (and pass) regulatory-mandated professional licensing examinations, b) receive clinical instruction in furtherance of training to become licensed stockbrokers and c) working alongside senior brokers to develop their skill sets and to obtain important practical experience (through performance and observation) to become accomplished stockbrokers.

The Program also provides “on-site classes and sponsorship necessary for the series 7 exam.”

The petitioner provided a print-out of the U.S. Department of State’s Background Notes on Venezuela. In the report under the Economy section, it states that a “replacement market called the [REDACTED] began to operate in June 2010.” The report further stated that “any other foreign exchange transactions are not legally permitted, although a black market is reported to exist.”

On April 1, 2011, the director sent a request for additional evidence. The director requested evidence showing the purpose and/or need the petitioner has in providing this training program. In response, counsel submitted an “Executive Summary” of the petitioner that stated that new expansion plans have commenced, including “developing Latin and South America business for governments and private business seeking to take advantage of United States markets.” Counsel also stated that the petitioner is “beginning to focus on increasing the training and employment

of individuals that will help the Firm increase its international presence in countries around the world, specifically Latin America and Asia.”

The petitioner also provided more information on the training program as follows:

- Sponsorship for the Series 7 and 63 exams
[The petitioner] has partnered with [REDACTED] to prepare Stockbroker Trainees with top-quality education and training. Instructor [REDACTED] holds classes on-site at the Client’s headquarters. [REDACTED] has taught classes in finance and investments at the New York University School of Continuing Education. He holds a BBA from Bernard M. Baruch College, and an MBA from NYSE/NASD Series exam writing committee, where he was actively involved in the composition of the Series 7 exam.
- General Training
During the training program, the Stockbroker Trainees are provided with prospective training, sales-training, and of course ethics and compliance training.
- Learning/working alongside seasoned professionals and making industry contacts
Many of [the petitioner’s] Financial Advisors are Wall Street veterans. Personnel are encouraged to contribute to a synergy that has allowed [the petitioner] to achieve recent growth and success in the financial industry. The leadership is distinguished: [REDACTED] are regular guests at [REDACTED] and act as mentors and are available as resources to Financial Advisors on a daily basis.

Counsel for the petitioner also stated that the petitioner hires individuals who participated in the training program. Specifically, counsel stated that “approximately 90% of trainees that successfully complete the program are offered some form of employment.”

Counsel also stated that when the beneficiaries complete the training program, they “will be licensed to sell U.S. securities both domestically and internationally subject to local and foreign restrictions.”

Furthermore, the petitioner submitted a new document explaining the three parts of the training program. In the first part, the trainees are matched with a Financial Advisor and “spend a few weeks on the floor of the trading room [communicating with] prospective investors through an outbound telemarketing approach.” The document stated that trainees are “compensated \$300 per week during this time.” The next part of the training will last 30 to 45 days in an “on-site classroom studying for the Series 7 and Series 63.” The document states that “Series 7 requires 90 hours of textbook review,” and the “Series 63 has 15-20 hours of textbook review.” Finally, “upon successful completion of the Series 7 and Series 63, trainees are registered representatives with [the petitioner] and return to the trading floor with their Senior Financial Advisors.” At this stage, the beneficiaries will be in an “intense training period whereby they’re taught a more extensive presentation which includes qualifying potential investors for future investment

opportunities, relationship building techniques and the presentation of specific investments based on information gathering during the qualifying stage.” The document also stated that “intense training continues until the trainees open 10 accounts,” and once the 10 accounts are opened, the “trainee is free to separate from the Senior Advisor or can choose to remain on the team in a partnership with the Senior Advisor.”

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, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(F), the petitioner’s proposed training program is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. As noted by the director, the petitioner’s offer letter to the trainees stated that the “purpose of the Program is to recruit and train interested, hard-working, dedicated individuals to become licensed stockbrokers.” In addition, in response to the director’s request for evidence, the petitioner provided more detail about the training program which stated that the trainees in the third part of the training program will “open 10 accounts,” and once the 10 accounts are opened, the “trainee is free to separate from the Senior Advisor or can choose to remain on the team in a partnership with the Senior Advisor.” In addition, the beneficiaries will be trained in the petitioner’s core principles.

On appeal, counsel for the petitioner states that the beneficiaries will work in Venezuela and the petitioner’s “intention is to train with [the petitioner] in order to work as foreign stockbrokers in Venezuela.” This information does not coincide with the statements in the offer letter explaining the purpose of the training program as to “recruit and train” individuals to become licensed stockbrokers.” In addition, the Form I-129 stated that the petitioner “may choose to employ the trainees abroad as foreign associates”, thus, it is not a definite plan for the petitioner to hire the beneficiaries. Moreover, the petitioner stated that the “Venezuelan Government decided to shut down all registered investment firms in the Country.” Thus, it is not clear how the petitioner plans to hire the beneficiaries in Venezuela when the government has closed down the ability of stockbrokers to trade within investment firms. The petitioner’s intention for training the beneficiaries is not consistent throughout the record. 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).

The director also found that the petitioner failed to submit evidence that the training program does not deal with 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 beneficiaries would actually be doing on a day-to-day basis. The program is a twelve-month training program that is divided into three phases. The petitioner submitted a description of the training program that consisted of three paragraphs. The first phase consists of “a few weeks on the floor of the trading room prospective investors through an outbound telemarketing approach.” It is not clear how many weeks this part will consist of and also what the beneficiaries will actually be doing during the telemarketing approach. The next phase will last approximately 50 days and the trainees will study for the Series 7 and Series 63 exam. It is not clear why this stage will last 50 days when the petitioner stated that the Series 7 requires “90 hours of textbook review,” and the Series 63 requires “20 hours of textbook review.” If the beneficiaries are studying full-time, the textbook review will not take 50 days. Finally, the third phase consists of the beneficiaries returning to the trading floor and will be taught a “more extensive presentation which includes qualifying potential investors for future investment opportunities, relationship building techniques and the presentation of specific investments based on information gathering during the qualifying stage.” The petitioner does not explain how this information will be taught and how long this phase will last. In this final phase, the petitioner generally indicated the topics to be discussed but did not explain what materials will be utilized for the instruction and what will consist of the practical and/or on-the-job training. 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.

In addition, the petitioner did not explain how the beneficiaries will be evaluated. 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. 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 director noted in his decision that the beneficiaries will be trained by an outside trainer. The AAO will withdraw this portion of the decision as the petitioner may qualify for H-3 classification even if it brings an outside trainer to train the beneficiaries during the H-3 program.

In addition, the director noted that the petitioner did not demonstrate that the proposed training will benefit the beneficiaries in pursuing a career outside the United States pursuant to the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

As the purpose of the proposed training program is to train the beneficiaries on the petitioner’s “core principles of individual and personalized service,” and to help the beneficiaries pass the Series 7 and Series 65 exams, and to provide the beneficiaries with training on the trade floor, the only setting in which the beneficiaries would be able to utilize their newfound knowledge would be for the petitioner. As noted by the petitioner, the Venezuelan government “decided to shut down all registered investment firms in the Country.” The petitioner also submitted the Department of State’s Background Notes on Venezuela that explained a “replacement market

called [REDACTED] began to operate in June 2010,” and “any other foreign exchange transactions are not legally permitted.” Thus, according to the documentation submitted by the petitioner, it would be illegal for the beneficiaries to work as stockbrokers for the petitioner in Venezuela. In addition, it is not clear that a stockbroker in Venezuela is required to take the Series 7 and Series 63 exams, preparation for which is an integral part of this training program.

Although the petitioner submitted an Executive Summary that stated it has plans to expand to South America, it did not submit any evidence that it has a branch or affiliate office abroad, or has any plans to open one soon. As the petitioner has no operations in Venezuela, there exists no setting in which the trainees would be able to utilize their newfound knowledge. 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 case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiaries would utilize their skills would be for the petitioner, the petitioner must document that it actually has plans to commence operations in Venezuela upon completion of the training. The petitioner stated that it wishes to expand the business abroad. The petitioner did not provide any corroborating evidence such as a business plan, a lease for a location in Venezuela, or financial statements to support the opening of a branch office, or permits and licenses approving this business in Venezuela. 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)).

Beyond the decision of the director, 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 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.

It appears that the trainees will receive training but they will also be engaged in productive employment. Furthermore, without additional information regarding what the beneficiaries will actually be doing on a day-to-day basis, the AAO concludes that they may 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).

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 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.