

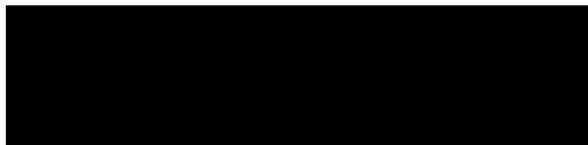
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 08 2012** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the 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 remain denied.

The petitioner represented itself on the Form I-129 as an intellectual property law firm with 350 employees. It seeks to employ the beneficiary as a patent and trademark trainee for a period of 12 months 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 director denied the petition on the basis of his determination that the petitioner failed to establish that its proposed training program has fixed objectives or means of evaluating the beneficiary. On appeal, the petitioner submits a brief letter reasserting its eligibility for the benefit sought and a letter from the beneficiary's current employer.

Applicable Law

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)(1)(ii)(E) states, in pertinent part, the following:

An H-3 classification applies to an alien who is coming temporarily to the United States:

- (1) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution. . . .

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.

Procedural History

The petitioner filed the instant petition on [REDACTED]. The director issued a subsequent request for additional evidence (RFE), and the petitioner filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on August 1, 2011. The petitioner filed the instant appeal on [REDACTED].

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

The Proposed Training Program

In its [REDACTED] letter of support the petitioner claimed to have a long history of training attorneys and paralegals in the field of U.S. patent and trademark law, and stated that its training program will provide the beneficiary with procedural and substantive experience in preparing and filing patent and trademark applications with the U.S. Patent and Trademark Office. The petitioner explained that the beneficiary is currently employed by a South Korean law firm, and that completing the proposed training program will enable him to handle complex legal and administrative matters involving U.S. patents and patent applications filed by Samsung. The petitioner stated that the beneficiary would learn to prepare and prosecute U.S. patents, learn skills and techniques for use before federal courts and during interviews with U.S. Patent and Trademark examiners, and sit for the U.S. Patent Bar Examination. The petitioner explained it is offering this program as a courtesy to the beneficiary's current employer, and to Samsung, in the hope that it will benefit from gratitude and goodwill generated by the gesture.

The petitioner provided little information regarding the structure of the proposed training program when it filed the petition. As such, the director issued the RFE and requested, *inter alia*, that the petitioner demonstrate it has an actual, well-structured training program. In its [REDACTED] response, the petitioner stated that the proposed training program "does not consist of a regimented daily schedule." It explained that the beneficiary would study for the U.S. Patent Office Agent's Exam "during the first six to nine months" of the program utilizing "study material offered by one of numerous commercial training groups," and that during this time he would receive help with difficult

topics from the petitioner's attorneys. The petitioner stated that although the beneficiary would perform his "original job function" while participating in the training program he would also interact with the petitioner's attorneys on projects, and that such interaction would increase after the beneficiary passes the U.S. Patent Office Agent's Exam. The petitioner also claimed that the beneficiary would attend weekly lectures given by the firm's attorneys.

Generalities with no Fixed Schedule, Objectives, or Means of Evaluation

We agree with the director's determination that the proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A), which forbids approval of a training program dealing in generalities with no fixed schedules, objectives, or means of evaluation. In his decision denying the petition, the director found the petitioner's admission that its proposed training program "does not consist of a regimented daily schedule" evidence it has no fixed schedule, as specifically required by 8 C.F.R. § 214.2(h)(7)(iii)(A). He also found that the petitioner had failed to establish that the training program has a means of evaluating the beneficiary's progress.

In its [REDACTED] letter submitted on appeal, the petitioner states that it "developed a regimented daily schedule for our training program" to address the director's ground for denial of the petition. The petitioner also submits a document entitled "Training Program," which purports to provide a schedule for each week of the training program. However, we will not consider this submission, as the revised training program the petitioner describes on appeal is so radical a departure from the one described below that it constitutes a material change to the original training program rather than a mere clarification, which is expressly forbidden by 8 C.F.R. § 214.2(h)(2)(i)(E). That regulation states, in pertinent part, the following:

The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training . . . as specified in the original approved petition.

We agree with the director's determination that the evidence submitted below did not establish that the petitioner has a training program with fixed schedules, objectives, or means of evaluation. As the petitioner's appellate submission cannot be considered, the petitioner has failed to overcome this ground for denying the petition. As conceded by the petitioner in its [REDACTED] letter, the proposed training program does not have a fixed schedule, as expressly required by 8 C.F.R. § 214.2(h)(2)(i)(E). Nor did the evidence submitted below describe any means of evaluating the beneficiary's progress, which that regulation also requires.

Even if we were able to consider the material changes made to the training program on appeal, the petition would still be denied pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(A). First, the fact that the petitioner was able to make such a thorough revision to the structure of its proposed training program in such a brief period of time would not be indicative of a training program with a fixed schedule, objectives, and means of evaluation. We would also find that the petitioner still failed to adequately describe what the beneficiary would actually be doing during the training program. While the petitioner is not required to submit an exhaustive breakdown of what the beneficiary

would be doing during every minute of the training program, the revised training program description submitted on appeal still does not provide a meaningful description, beyond generalities, of what the beneficiary would actually do on a daily basis. For example, the statements “[n]ovelty and other requirements for patentability under § 102,” “[r]epresenting the inventor or owner,” and “[c]ase work for home firm,” do not provide a meaningful description of what the beneficiary would actually be doing, and it is not even clear whether these are lecture titles, course titles, or self-study topics. Finally, the revised training program description submitted on appeal still fails to describe any proposed evaluation of the beneficiary’s progress.

The petitioner has failed to establish that its proposed training program does not deal in generalities with no fixed schedules, objectives, or means of evaluation as required by 8 C.F.R. § 214.2(h)(7)(iii)(A).

Conclusion

On appeal the petitioner has not overcome the director’s ground for denying the petition. The petitioner has failed to establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(iii) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). It has not met that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.