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FILE: EAC 06 194 54464 Office: VERMONT SERVICE CENTER Date:

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will be revoked.

The petitioner is a luxury hotel and resort that seeks to employ the beneficiaries as manager-in-development trainees for a period of eighteen months. The petitioner, therefore, endeavors 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 notice of intent to revoke the petition's approval (NOIR); (3) the petitioner's response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Although the director initially approved the nonimmigrant petition on June 29, 2006, he issued the NOIR on August 14, 2006. The director stated that, upon further review, he had determined that the training program did not qualify for the requested classification. The NOIR provided the petitioner 30 days during which to address the deficiencies in the petition. The director revoked the petition's approval on October 2, 2006. In his revocation, the director cited the criteria that must be met for H-3 classification and stated that the petitioner had failed to satisfy any of them.

On appeal, counsel contends that the director erred in revoking the petition's approval, and restates points raised in the response to the NOIR and in the petitioner's letter of support. Counsel states that the proposed training program satisfies all the requirements for H-3 classification in that the proposed training is not available in the aliens' home countries; the beneficiaries will not be placed in a position which is in the normal operation of business and in which citizens and resident workers are regularly employed; that the beneficiaries will not engage in productive employment unless that employment is incidental and necessary to the training; and that the training would benefit the beneficiaries in pursuing careers outside the United States.

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;

- (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.

According to the training program syllabus submitted with the petitioner's June 12, 2006 letter of support, the proposed training program would last between twelve and eighteen months. At page 3, the "Program Overview & Objective" portion of the program syllabus states the following:

Participants will gain exposure in resort food, beverage, culinary arts, as well as spa and retail operations. Participants will analyze hospitality management practices to include: service operations, financial management[,] and human resources. Participants will also develop problem solving and decision making abilities through direct observation, analysis[,] and evaluations of various situations.

The petitioner's proposed training program is entitled "Manager in Development Program" (MID program). According to the "Program Structure," there are two levels of the MID program: (1) Level I: Hospitality Management (Undergraduate); and (2) Level II: Hospitality Management (Graduate), both of which last from twelve to eighteen months.

At page 5 of the program syllabus, the petitioner states the following:

Participants shall enter the program as operational staff members working in entry-level positions to gain an in depth understanding of departmental functions. As competencies are strengthened, administrative functions and supervisory roles (*supervisory roles may also include team leader, management support functions or shadowing and may vary by department*) will broaden knowledge of accounting, finance[,] and human resources [*italics in original*].

The MID program begins with a program introduction outlined at pages 6-7 of the program syllabus. The introduction consists of five components: (1) a 12-hour "New Hire Orientation"; (2) an 8-hour "Management Orientation"; (3) a "Departmental Orientation" of unspecified length; (4) a 2-hour "Supervisor's Orientation"; and (5) the "'Boca Buddy' Program," also of unspecified length, in which new trainees and experienced trainees are paired in order to facilitate the new trainee's adjustment to his or her surroundings, work, and cultural environment.

After the program introduction, the trainees "will have the opportunity to participate in at least one to three department rotations." There are eight available department rotations: (1) the rooms division (consisting of the front office, laundry, and housekeeping); (2) catering and convention services; (3) accounting and finance; (4) food and beverage; (5) member services; (6) spa operations; (7) reservations; and (8) club operations.

The program syllabus, beginning at page A-2, provides additional information regarding each of the eight possible department rotations (again, of which each beneficiary would participate in at least one to three).

For example, if one of the beneficiaries were to complete a rotation in the rooms division, they would complete rotations in the front office, in housekeeping, and in laundry (timelines were not provided). By the end of the rotation, the participating beneficiary would have learned the following: (1) the operational functions of the front office, of the housekeeping department, and of the laundry department; (2) conflict management and guest relation skills; (3) computer skills; (4) business management skills including scheduling, payroll, budgeting, and forecasting; and (5) interviewing, hiring, and training techniques.

Regarding the time spent on classroom instruction, the program syllabus, at page 8, states the following:

Managers in Development are encouraged to continue learning by taking classes at the Resort. The Resort offers the Educational Institute (EI) which provides semester long courses twice a year. Classes are instructed by Resort Managers and introduce participants to the subjects of hospitality industry training, financial accounting, food and beverage service, sales and marketing, front office procedures, facilities management[,] and more.

Instruction focuses on methods used within the industry and the Resort. MID's are required to take at least one EI class per semester, earning them certificates toward gaining a Hospitality Management Diploma.

The program syllabus, also at page 8, states the following with regard to evaluation:

At levels I and II, participants receive a one-on-one overview from each department manager at the commencement of the rotation phase. The department manager will oversee daily activities to ensure exposure to the full range of departmental operations and to act as mentors for new areas of learning.

Formal meetings are used to build strength in department operations, solicit feedback, review open departmental positions[,] and share important information necessary to the success of the program.

According to the petitioner in its letter of support, and repeated by counsel on appeal,

The key objectives of the Manager in Development program are to introduce the program participants to exceptional service standards and diverse culture. This is an exemplary introduction to the art of learning by joining textbook knowledge with hands on experience. The purpose of the program is 1) to contribute to the culture of learning by providing participants the opportunity to further develop as hospitality industry professionals by working in this organization; 2) to enrich the [petitioner] and [its] environment through exposure to different countries, peoples[,] and cultures, while providing participants with the opportunity to have meaningful professional learning and to experience cultural life in the United States; 3) to transfer knowledge about the [petitioner's] systems and standards pertaining to service excellence, supervision, people development[,] and financial management to a global audience of hospitality professionals; and 4) to enhance and enrich the [petitioner's] own staff's abilities through the observation of individuals who bring multilingual skills and elements of different traditions of hospitality and hotelierie.

The AAO agrees with the director 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 had not established that the training was not available in the the beneficiaries' home countries. The AAO agrees. 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.

In his NOIR, the director requested evidence to satisfy this portion of the regulation, stating the following:

The Service is neither persuaded that the training described is unavailable any where [sic] else in Europe nor persuaded that there are any real differences between hospitality management practices in the United States and other parts of the world. The training outline provided is not specific to American-style hospitality management . . . If the Service relied upon the petitioner's "individual business operation" as a means of establishing that the training is unavailable outside the United States, then any petitioner could claim that their business operation qualifies for an H3 training program. . . .

In his September 14, 2006 response to the director's NOIR, counsel first noted that the petitioner has received 79 H-3 approvals for this training program over six years. Counsel did not address the director's finding, but instead submitted three letters as evidence that the training that would be received in the petitioner's MID program cannot be obtained abroad.

The first letter, dated July 1, 2005, is from [REDACTED] CHE, Associate Dean for Academic Programs at Florida International University. [REDACTED] provides information regarding the petitioner's business operations and its excellent reputation. In relevant portion to the issue of whether the proposed training can be obtained abroad, she states the following:

MIS participants develop an understanding of the composition of hospitality management in the United States and U.S. supervisory training. Their hotel management skills are enhanced; they increase their knowledge of specialized U.S. business practices; and they gain an increased familiarity with American service industry culture.

However, [REDACTED]'s letter does not address the issue of why this training cannot be obtained abroad. She does not explain how the training to be received would differ from the type of training that the beneficiaries would receive abroad; she simply states that they will receive training on United States business practices, gain familiarity with the culture, etc. Nor has she provided any evidence that the training to be received is unavailable in the United Kingdom, in Mexico, in Russia, in Sweden, in Panama, in the Netherlands, in Thailand, in Vietnam, or in Indonesia, the beneficiaries' home countries. Simply 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)). Accordingly, [REDACTED]'s letter is of limited probative value.

The second letter, dated July 7, 2005, is from [REDACTED], Programme Leader in International Business Management at the University of Surrey School of Management, located in the United Kingdom. In relevant portion, [REDACTED] states the following:

As the Programme Leader for our International Business Management programme, and having spent 21 years prior to my current position working in industry in North America, I support the need for the “internationalization” of professional development for students.

Given especially the field of hospitality management, with it’s [sic] predominance of American global players such as Starwood, Marriot[,] and Hilton and the best management practices emanating from the U.S. hospitality industry, the management experience to be gained there is unparalleled and couldn’t be replicated anywhere else.

[REDACTED] letter suffers the same deficiencies as the previous letter. He does not explain how the training to be received in the petitioner’s proposed training program in the United States would differ from that obtained in any other country; he simply states that it is different and cannot be replicated. No evidence was provided to support his assertions. 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)). Accordingly, [REDACTED]’s letter is also of limited probative value.

The third letter, also dated July 7, 2005, is from [REDACTED] a Programme Leader in International Hospitality Management at the University of Surrey School of Management, located in the United Kingdom. He states the following, in relevant part:

It is a fact that Hospitality Organisations in the United States are at a different level to that of Europe. In all areas of the Hotel Operations it is US operations that are used as examples of Best Practise. I dare say that in the United Kingdom as well as the rest of Europe in terms of management and organisation our industry falls second.

It is indeed true that management trainee programs exist in Hotel Companies in the United Kingdom but having seen the management training program that the [petitioner] offers to these students, I feel secure enough to say that it would be very hard indeed to find an organisation in the UK that would offer a management trainee program of such standards. . . .

The organisation culture of the [petitioner] is directly linked to the national culture that is unique to the United States.

Again, this letter suffers the same deficiencies as the previous letters. [REDACTED] does not explain how the training to be received in the petitioner’s proposed training program in the United States would differ from that obtained in any other country; he simply states that the training provided in Europe is inferior to that provided in the United States. Nor was any evidence provided to support his assertions. 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)).

Finally, the AAO notes that the fact that a training program offered by a United States employer is better than a similar program in a foreign country does not establish eligibility under this regulation.

On appeal, counsel resubmits these three letters, and asserts that previous approvals demonstrate that the petitioner “has proven that there are in fact differences between the American and the European-style hospitality management.” However, the petitioner has not proven it here. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Counsel also states, on appeal, the following:

Training in the American style and structure of hospitality management is not readily available in other parts of the world. Once again, it bears emphasizing that training in American hospitality standards and techniques is not available worldwide [emphasis in original].

However, as noted previously, counsel has submitted no evidence to support this assertion. Again, 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In this case, neither counsel nor the petitioner have submitted any evidence to demonstrate that the training the beneficiaries would receive in the proposed training program is unavailable in the United Kingdom, in Mexico, in Russia, in Sweden, in Panama, in the Netherlands, in Thailand, in Vietnam, or in Indonesia, the beneficiaries' home countries. The record contains no evidence, other than the assertions of counsel, the petitioner, and the authors of the letters that the type of training offered in the proposed training program is unavailable in the beneficiaries' various home countries. The petitioner has not met its burden of proof in this regard.

The director also found that the petitioner had failed to demonstrate that the beneficiaries 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. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) requires the petitioner to demonstrate that the beneficiary of a proposed training program 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.

As noted previously, the petitioner states at page 5 of the program syllabus that trainees enter the MID program “as operational staff members working in entry-level positions. . . .” While the petitioner later states that administrative functions and supervisory roles will broaden knowledge of accounting, finance, and human resources as competencies are strengthened, it does not change the fact that the beneficiaries will be working in entry-level positions, in the normal operation of the business, and in which citizens and resident workers are regularly employed. The petitioner provides no evidence to indicate how long the beneficiaries would spend working in entry-level positions as operational staff members, so the AAO is

unable to determine whether the time spent in such roles would be negligible. However, given the fact that this is a 12-18 month program, and that the beneficiaries may participate in as few as a single departmental rotation, it appears that the beneficiaries would spend longer than a minimal period of time as operational staff members. The AAO also notes that the beneficiaries will earn \$27,000 per year, a salary commensurate with productive employment. The petitioner has failed to demonstrate that the beneficiaries would not be placed in positions which are in the normal operation of the business and in which citizens and resident workers are regularly employed and, accordingly, the petitioner's proposed training program does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

The director also found that the petitioner had failed to demonstrate that the beneficiaries would not engage in productive employment beyond that necessary and incidental to the training program. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires a demonstration that the beneficiaries 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. The AAO agrees. As alluded to previously, it appears that the bulk of the proposed training program would involve productive employment. According to the program syllabus, at page 8, although semester-long courses are offered twice per year, the trainees are only required to attend one class. Such a schedule indicates that most of the education obtained in the proposed training program is obtained via on-the-job learning. It appears from the record of proceeding that the overwhelming majority of the beneficiaries' time would be spent in productive employment, and neither counsel nor the petitioner have submitted any evidence to establish that such is not the case. While spending such a large percentage of the beneficiaries' time in productive employment may be necessary, the record does not establish that such employment is incidental to the training. The petitioner has failed to demonstrate that the beneficiaries would not engage in productive employment beyond that necessary and incidental to the training program.

The director also found that the petitioner had failed to demonstrate that the training would benefit the beneficiaries in pursuing careers outside the United States. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4), requires a demonstration that the training would benefit the beneficiaries in pursuing careers outside the United States. The AAO finds that the training to be obtained in the petitioner's proposed training program would benefit the beneficiaries in pursuing careers outside the United States, and accordingly withdraws that portion of the director's decision.

The director also found that the petitioner had failed to include a statement which describes the type of training and supervision to be given, and the structure of the training program, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). The AAO disagrees. The program syllabus submitted by the petitioner at the time the petition was filed satisfies 8 C.F.R. § 214.2(h)(7)(ii)(B)(1), and the AAO accordingly withdraws that portion of the director's opinion.

The director also found that the petitioner had failed to include a statement which sets forth the proportion of time that will be devoted to productive employment, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(2). The AAO agrees. The record contains no such statement. Accordingly, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(2).

The director also found that the petitioner had failed to include a statement which shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(3). The AAO agrees. Although the petitioner did state that the beneficiaries

are required to attend a single class, it did not indicate how long that class would last. Accordingly, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(B)(3).

The director also found that the petitioner had failed to include a statement which describes the career abroad for which the training will prepare the beneficiaries, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(4). The AAO disagrees. According to the petitioner's letter of support, upon completion of the training program the beneficiaries will assume leadership positions in the global hospitality industry. While vague, the AAO accepts this statement, and accordingly withdraws that portion of the director's opinion.

The director also found that the petitioner had failed to include a statement which indicates the source of any remuneration received by the trainees and any benefit which will accrue to the petitioner for providing the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(6). The AAO disagrees. The record establishes that the beneficiaries will receive a salary of \$27,000 per annum, and the petitioner has stated that the beneficiaries' presence would enrich the petitioner and its environment through exposure to different country, peoples, and cultures, as well as to enhance its staff's abilities through the observation of individuals who bring multilingual skills and elements of different traditions of hospitality. The AAO finds this explanation reasonable, and therefore withdraws this portion of the director's decision.

The director also found that the petitioner had not established that its proposed training program has a fixed schedule, objectives, and a means of evaluation. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a proposed training program that deals in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees.

First, the AAO notes conflicting information in the record regarding the length of the training program. According to the Form I-129 and counsel's and the petitioner's letters, it would last eighteen months. However, the program syllabus states that it lasts "12-18 months." Beyond the fact that this is conflicting information, the AAO notes that it is not indicative of a fixed schedule. Nonetheless, 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).

Also, as discussed previously, the AAO notes that the program syllabus, at page 4, states that there are in fact two training programs offered by the petitioner: Level I and Level II. Neither counsel nor the petitioner have advised as to which program the beneficiaries of this petition would participate.

Moreover, the AAO notes that there are eight possible departmental rotations in its program. At page 6 of the program syllabus, the petitioner states that the beneficiaries will participate in at least one to three of these rotations. However, the AAO has no information regarding which beneficiaries would participate in which rotations. While the petitioner has submitted additional information regarding each of the eight rotations, it is of little value since the AAO is without knowledge as to which rotations the beneficiaries would participate in. While the petitioner may not yet have this information, it is nonetheless indicative of a program that does not have a fixed schedule. The fact that beneficiaries may participate in one, two, three, or more rotations is also evidence of a program without a fixed schedule. Accordingly, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(B), the petitioner's proposed training program is incompatible with the nature of the petitioner's business or enterprise. The AAO disagrees. It finds no evidence for such a determination, and therefore withdraws that portion of the director's decision.

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(C), the petitioner's proposed training program is on behalf of beneficiaries who already possesses substantial training and expertise in the proposed field of training. The AAO disagrees, and therefore withdraws that portion of the director's decision.

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(D), the petitioner's proposed training program is in a field in which it is unlikely that the knowledge or skill will be used outside the United States. The AAO finds no basis for such a determination, and withdraws that portion of the director's decision.

The director also 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. The AAO finds no basis for such a determination, and withdraws that portion of the director's decision.

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(G), the petitioner had not established that it has the physical plant and sufficiently trained manpower to provide the training specified. Again, the AAO finds no basis for such a determination, and withdraws that portion of the director's decision.

The director also found that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(H), the petitioner had not established that its proposed training program was designed to extend the total allowable period of practical training previously authorized a nonimmigrant student. Again, the AAO finds no basis for such a determination, and withdraws that portion of the director's decision.

Finally, the AAO notes that counsel contends the petition should be approved because of past approvals. He states the following:

The Service is should [sic] approve this petition because the eligibility of the foreign nationals has been demonstrated and numerous approvals for the same Training Program at the [petitioner] have been issued in the past. . . .

However, as noted previously, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. However, if those petitions were approved based on the same unsupported assertions contained in the current record, their approvals were erroneous. 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 CIS 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 those nonimmigrant petitions, 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). Further, prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-3 petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation because the proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

For the reasons set forth in the preceding discussion, the AAO finds that the petitioner has failed to overcome the director's revocation of the petition's approval. Accordingly, the AAO will not withdraw the director's decision.

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. Approval of the petition is revoked.