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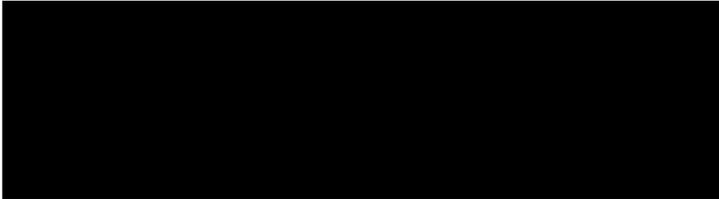
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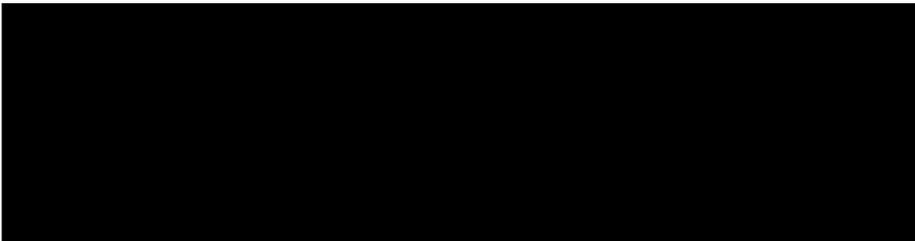


FILE: WAC 06 124 53064 Office: CALIFORNIA SERVICE CENTER Date: AUG 20 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, a cellular telephone sales and activation company with three employees, seeks to employ the beneficiary as a manager trainee for a period of nineteen months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on two grounds: (1) that the petitioner had failed to demonstrate how the proposed training will benefit the beneficiary in pursuing a career abroad; and (2) that the petitioner had failed to demonstrate that it has sufficiently trained manpower to provide the proposed training specified.

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.

As a preliminary matter, the AAO notes that the Form I-129 states that the petitioner is a cellular telephone sales and activation company. However, in the program syllabus that accompanied its letter of

support, the petitioner indicated that it is also: (1) a medical billing company, and (2) a company operating in the field of fashion design (the beneficiary “will be exposed to all our company fashion and garment lines that may include but is not limited to: product descriptions, design and specifications, raw materials used, production cost[,] and manufacturer”). In its response to the director’s request for evidence, the petitioner indicated that it also conducts business in the fields of (1) real estate investment and management, and (2) electrical supplies. 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). Further, the Form I-129 states that the proposed training program will last 19 months. The petitioner’s letter of support states that the proposed training program will last 19 months in three places, but states that it will last 15 months in three places. The traineeship agreement between the petitioner and the beneficiary states that the proposed training program will last 18 months. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*.

In the training manual submitted with the petitioner’s March 6, 2006 letter of support, the petitioner stated the following:

The main goal of the program is to educate [the] Manager trainee in all areas of [the petitioner’s business]. By the end of the 15-month period the trainee would have gained knowledge in internet marketing operations which may include but is not limited planning, developing, coordinating, analyzing[,] and maintaining business systems, functions[,] and activities.

The petitioner stated that the objectives of the proposed training program were to introduce the beneficiary to the petitioner’s operational system; to prepare the beneficiary for a management position; and to expose the beneficiary to the petitioner’s key departmental responsibilities (specifically, overall administrative operations, marketing, sales, and accounting); to learn all aspects of a medical billing company;<sup>1</sup> to educate the beneficiary in the management and operations of an internet marketing business; to equip the beneficiary in the development, implementation, and enforcement of internet marketing strategies; to expose the beneficiary to new technologies and marketing strategies; and to teach the beneficiary aspects of brand management useful in web development.

The petitioner stated that the beneficiary would undergo academic instruction and practical training for eight hours per day, five days per week. The petitioner stated that the beneficiary would not engage in any productive employment not incidental to the supervised training, and would receive constant instruction and/or supervised training during the entire course of the program.

The petitioner stated that its proposed training program would consist of five phases, with several of the phases broken into several sessions.

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<sup>1</sup> The petitioner’s training program syllabus indicates that the purpose of the training program is to develop highly qualified individuals for key positions of responsibility for the petitioner and its future companies. Given the objectives of the petitioner as set forth in its program syllabus, it is unclear to the AAO how the beneficiary would benefit from learning all aspects of the business of a medical billing company. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The first phase, consisting of an orientation to the petitioner's company, would consist of two sessions and last for one month. The first session, which would last for two weeks, would be entitled "General Orientation & Industry Familiarization." The second session, which would last for two weeks, would be entitled "Internet Marketing Industry." According to the petitioner, during this time the beneficiary would be introduced to the online marketing business.

The second phase of the proposed training program, entitled "[The petitioner's] Operations and Procedures," would consist of four sessions and last for eight months. In the first session of this phase, which would last for two months, the petitioner would "be exposed to all our company fashion and garment lines that may include but not be limited to: product descriptions, design and specifications, raw materials used, production cost[,] and manufacturer."<sup>2</sup> In the second session of this phase, which would last for two months, the beneficiary would be introduced to the principles and practices of modern warehousing. The third session of this phase, entitled "Sales & Distribution Management," would last for two months. The objective of this phase would be to acquaint the beneficiary with the company's sales and distribution system. The fourth session of this phase, entitled "Management Information Systems," would last for two months. The objective of this phase would be to expose the beneficiary to the petitioner's computer and software systems.

The third phase of the proposed training program, entitled "Web Placement & Promotion," would consist of two sessions and last for four months. The beneficiary would learn to develop effective web promotion strategies during this phase. The first session of this phase, entitled "Introduction to Website Promotion and Search Engines," which would last for two months, would teach the beneficiary how to create customized link marketing campaigns. The second session of this phase, entitled "Forms of Online Advertising and Promotions," which would last for two months, would "extensively tackle various forms of online advertising promotions."

The fourth phase of the proposed training program, entitled "Business Strategies," would consist of four sessions and last for five months. The first session of this phase, entitled "Merchandising," which would last for two months, would teach the beneficiary merchandising administration. The second session of this phase, entitled "Logistics Issues," would last for one month. The third session of this phase, entitled "Market Research," would last for one month and would train the beneficiary in conducting market research useful for import-export decision-making. The fourth session of this phase, entitled "Market Strategy and Implementation," which would also last for one month, would provide the beneficiary with skills and experience in conceptualizing and implementing marketing strategies.

The fifth phase of the proposed training program, entitled "Final Evaluation," would last one month. During this phase, the petitioner would assess the expertise and proficiency of the beneficiary.

In her August 28, 2006 request for additional evidence, the director requested, among other items, additional evidence to demonstrate that the proposed training is not available in the beneficiary's home country, as well as evidence to demonstrate that the petitioner has the physical plant, equipment, and

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<sup>2</sup> Again, given the objectives of the petitioner as set forth in its program syllabus, it is unclear to the AAO how the beneficiary would benefit from exposure to the petitioner's fashion and garment lines. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

sufficiently trained and qualified manpower to provide the training offered. The director also requested additional information regarding the specific details of the petitioner's proposed training program.

Regarding the director's request for additional information regarding why the beneficiary cannot obtain the proposed training in the Philippines, counsel stated the following in her October 6, 2006 response to the director's request for additional evidence:

Cellular phone companies in Manila, Philippines have steadily and increasingly been an emergent market and are now permeating not only in the large city of Manila but through out the entire nation . . . While the upward trend is evident, exposure to the high level of technology is non-existent.

Despite Manila, Philippines being a highly developed as well as being one of the largest cities in Asia, the level of sophistication in the area of managerial training with a main focus in cellular phones is not currently being offered . . . The Training Program is designed to provide the Trainee an in depth knowledge of the entire aspect of our business as well as the ever changing new systems, in cellular technology such as GSM, TDMA, CDMA, and IDEN methods. . . .

Counsel also submitted a letter from [REDACTED] Governor of The Institute of Electronics & Communications Engineers of the Philippines (IECEP), dated March 14, 2006, stating that, in the Philippines,

[C]urrent available support services and practical trainings are limited only to GSM and NAMPS as of this time.

Software and hardware (mobile phones repairs/maintenance) trainings for other systems – like TDMA and CDMA – are considered relatively new and rarely available in the Philippines. However, IECEP encourages its members to attend/avail of all professional enhancement trainings and seminars on the subject on a regular annual basis wherever available.

The petitioner submitted a revised training program manual in response to the director's request for additional evidence. The petitioner stated that its proposed training program would now consist of five phases, with two of the phases broken into two sessions.

The first phase, consisting of an orientation to the petitioner's company, would consist of two sessions and last for thirty-one weeks. The first session, which would last for one week, would be entitled "General Orientation: Structure & Politics." The second session, which would last for thirty weeks, would be entitled "Company Operations." According to the petitioner, the objective of this session would be "[t]o expose the Trainee to the daily operations of [a] real estate investment and management company."<sup>3</sup> During this time, the beneficiary would observe the operations of the petitioner from the

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<sup>3</sup> Again, given the objectives of the petitioner as set forth in its program syllabus, it is unclear to the AAO how the beneficiary would benefit from exposure to a real estate and management company. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

management's viewpoint. The petitioner stated that the beneficiary would be encouraged to join the petitioner's management meetings to participate in brainstorming activities.

The second phase of the proposed training program, entitled "Advertising, Public Relations, Sales, and Marketing," would consist of two sessions and last for fifty weeks. The first session of this phase, which would last for thirty weeks, would consist of instruction in advertising and public relations. According to the petitioner, the beneficiary would spend eighty percent of his time during this period learning the fundamentals of advertising. The second session of this phase, which would last for twenty weeks, would consist of instruction in sales and marketing. The petitioner stated that the beneficiary would learn to research market conditions; how to conduct the necessary research and studies and to be responsible for the design and format of the tools used for data gathering, such as surveys, opinion polls, and questionnaires; how to examine and analyze the data gathered; and how to gather data about similar companies. The beneficiary would also learn the petitioner's standard sales program; how to set company sales objectives; and how to observe employees in their day-to-day tasks.

The third phase of the proposed training program, entitled "Records Management System," would last for one week. During this week, the beneficiary would be taught the petitioner's system of recording and maintaining employee and clients profiles.

The fourth phase of the proposed training program, entitled "Accounting and Budgeting," would last for one week. According to the petitioner, "[t]his phase will enable the Trainee to learn finance, accounting, budgeting, and cost control procedures observed in operating an electrical supplies business."

The fifth phase of the proposed training program, entitled "Review and Evaluation," would last for one week. During this week, the beneficiary would undertake an exhaustive review and preparation for placement abroad.

Upon review, 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.

As a preliminary matter, the AAO finds that the changes made to the proposed training program in the response to the director's request for additional evidence did not merely clarify the initial submission or submit additional details to fill in missing information. Rather, they constituted a material alteration to the proposed training program as set forth initially. For example, in the revised training program, the beneficiary was no longer to be exposed to the petitioner's fashion and garment lines for two months, he would not spend two months learning the petitioner's warehousing system, and he would not learn about the petitioner's medical billing business. The revised training program was to expose the beneficiary to the daily operations of the petitioner's real estate investment and management business for a period of thirty weeks, while such exposure was not part of the initial training program.

Nor was learning the Code-Division Multiple Access (CDMA) digital cellular technology part of the training program as originally proposed, as the AAO notes that the word "CDMA" appears nowhere in the initial submission. The training program as initially proposed did not focus on the technical aspects of wireless digital technology.<sup>4</sup>

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<sup>4</sup> Even if the AAO were to accept this alteration, the AAO does not find counsel's claims regarding the unavailability of CDMA technology in the Philippines convincing. The materials submitted by counsel as evidence that CDMA technology is new to the Philippines are seven years old. Moreover, the AAO notes

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Finally, the AAO finds that the petitioner's diverse business operations of cellular telephone sales and activation, medical billing, real estate investment and management, and fashion is not supported by 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Having noted the petitioner's material alterations to the petition in its response to the director's request for additional evidence, as well as highlighting the questions surrounding the petitioner's claimed business ventures, the AAO next turns to the matters raised by the director in her denial. As noted previously, 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 failed to demonstrate how the proposed training will benefit the beneficiary in pursuing a career abroad. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(D) precludes approval of a petition in which the proposed training is in a field in which it is unlikely that the knowledge or skill will be used outside the United States. As related earlier in this decision, CDMA technology is available in the Philippines. As the lack of such technology was the basis of the director's denial on this ground, that portion of the denial will be withdrawn.

The director also found that the petitioner had failed to demonstrate that it has sufficiently trained manpower to provide the proposed training specified. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified. In her denial, the director stated the following:

The petition form indicates that the petitioner has three employees and the record indicates the owner is the training supervisor. In the original submission, the training

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that the website of Qualcomm, the company which bills itself as having introduced CDMA technology in 1989, contains a press release, dated November 21, 1997, stating that it had signed a contract with the Philippines Telegraph & Telephone Corporation to deploy a 50,000 subscriber CDMA wireless local loop (WLL) system in that country. *See* <http://www.qualcomm.com/press/releases/1997/press707/html> (accessed August 7, 2007). The AAO questions counsel's contention that CDMA training is unavailable in the Philippines, as Qualcomm announced the imminent deployment of a 50,000-subscriber WLL in 1997, ten years ago.

manual indicates that the 15-month training will consist of 50% in academic and/or classroom training and 40% in practical and/or on-the-job training.

In its response to the RFE, 70% of the program will be devoted to academic instruction and 20% would be in supervised training. The response appears to be inconsistent with the original submission. USCIS notes that the proposed length of the training this time is 19 months and no other trainer is identified. The record is not persuasive how the employer would be able to provide 19 months of training comprising of 70% in academic instructions and still would be able to perform his professional work [emphasis in original].

On appeal, counsel offers the following rebuttal:

[P]lease note that the training will be conducted by the employer himself since he is the founder of the business and is more than capable of teaching the trainee all of the aspect [sic] of the business. The employer being the president may designate his duties to other personnel. Furthermore, 8 C.F.R.[.] 214.2 (h)(7) provides no rule as to who can be designated as the instructor nor does it provide any provisions as to how the petitioner will conduct the training. The service must place into account that the employer may manage their time as they please and that should not be a basis or grounds for them to speculate the manner in which the employer wishes to spend his time and base their [sic] decision on mere speculation.

The AAO finds counsel's rebuttal deficient. While counsel is correct that the petitioner's owner may spend his time as he pleases, the petitioner is not relieved from its burden of establishing eligibility under the regulation. As noted previously, the petitioner is required to demonstrate that it has sufficiently trained manpower to provide the training specified in the petition.

The AAO agrees with the director that the petitioner has failed to make such a demonstration here. It is unclear how one employee on a staff of three will be able to spend seventy percent of his time providing academic instruction to the beneficiary for a period of nineteen months while still attending to his other duties. The petitioner has provided no information as to how his responsibilities would be delegated to the other two employees during this period of time. Counsel's statement that the owner may do as he pleases is insufficient. 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).

Accordingly, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(G). As such, the AAO agrees with the director's decision that the proposed training program does not meet the regulatory requirements for approval of the nonimmigrant visa.

Beyond the decision of the director, the AAO finds that the petition may not be approved for additional reasons. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation. As indicated previously, the AAO finds that the petitioner's changes to the training program made in response to the director's request for additional evidence were not mere clarifications but rather constituted material alterations to the program.

The AAO incorporates here its previous discussion of the changes to the structure of the training program that the petitioner made in its response to the director's request for additional evidence, including elimination of the beneficiary's exposure to the petitioner's fashion and garment lines, elimination of the beneficiary's exposure to the petitioner's warehousing system, elimination of the beneficiary's exposure to the petitioner's medical billing business, as well as the introduction of new areas of study such as thirty weeks of exposure to the petitioner's real estate investment and management business and a new focus on the technical aspects of wireless digital technology, including learning CDMA digital technology. Such changes are not indicative of a program with a fixed schedule.

The AAO also finds that the proposed training program contains generalities. For example, the petitioner stated, in its response to the director's request for evidence, that the beneficiary would spend thirty weeks in a component of the amended training program entitled "Company Operations," in which the beneficiary would be exposed "to the daily operations of [a] real estate investment and management company." While the petitioner stated that the beneficiary would observe operations from the viewpoint of management; join management meetings; participate in and observe brainstorming activities and decision-making meetings; learn general administrative functions such as general maintenance and office management, its description of what the beneficiary would actually be doing, on a day-to-day basis, during this time was extremely general. The AAO finds the petitioner's three-sentence summary for a 30-week component of the training program insufficient.

For all of these reasons, approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(A). The AAO finds that the record fails to demonstrate the existence of a training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

The AAO also finds, beyond the decision of the director, that the petitioner has failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. 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.

First, the AAO reminds counsel and the petitioner 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 itself 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. The AAO finds that the petitioner has failed to establish that the training is unavailable in the Philippines, as a simple online search found that Qualcomm announced the imminent deployment of a 50,000-subscriber WLL ten years ago. Accordingly, the AAO finds that approval of the petition is precluded by 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

Finally, the AAO finds that, beyond the decision of the director, the petitioner has failed to demonstrate that the beneficiary does not already possess substantial training and expertise in the field. 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.

The beneficiary earned a bachelor's degree in psychology from Trinity College of Quezon City, in the Philippines, in 1992.<sup>5</sup> According to evidence contained in the record of proceeding, the beneficiary worked as a marketing assistant between May 1996 and November 1998, and a marketing officer between November 1998 and March 2001, for Creative Resources & Management, Inc., a company in the Philippines. During this time the beneficiary established a telemarketing company; developed and implemented direct marketing campaigns; designed "market collaterals"; conceptualized database management system programs; worked closely with the company's chief operating officer and finance manager on business planning, budget forecasting, and business development and contracted and negotiated several projects, such as direct marketing campaigns. After this experience, he worked for Cottage Industries, another Filipino company, as a sales and marketing manager from April 2001 until September 2005. During this time he developed annual marketing and sales plans; monitored product pricing; managed distribution strategies; and oversaw all of the company's marketing and advertising needs.

Given the goals and objectives of the petitioner's proposed training program, the AAO finds that the record demonstrates that the beneficiary possesses substantial training and expertise in the proposed field of training. A proposed training program must provide actual training to the beneficiary and not simply increase his proficiency or efficiency. *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965); *Matter of Sasano*, 11 I&N Dec. 363 (Reg. Comm. 1965); *Matter of Koyama*, 11 I&N Dec. 424 (Reg. Comm. 1965). The question is whether the beneficiary already possesses substantial training and expertise in the proposed field of training, not whether he possesses training and expertise regarding the petitioner's company. The beneficiary possesses a degree in a relevant field of study, and has worked in a similar field for at least nine years. The record establishes that he has substantial training and expertise in the field. Accordingly, approval of the petitioner's proposed training program is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(C).

Finally, the AAO notes that the petitioner has submitted a copy of an H-3 approval notice for an individual currently participating in its training program. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, its approval was 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 did approve a nonimmigrant petition similar to the one at issue here, 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).

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<sup>5</sup> The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), at page 28, lists a degree in psychology as acceptable preparation for positions as advertising managers, marketing managers, and sales managers, positions whose duties are similar to many of those to be imparted to the beneficiary in the proposed training program. At page 176, the *Handbook* states that persons preparing for a career in market research should take courses in psychology.

For all of these reasons, the petition may not be approved. 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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