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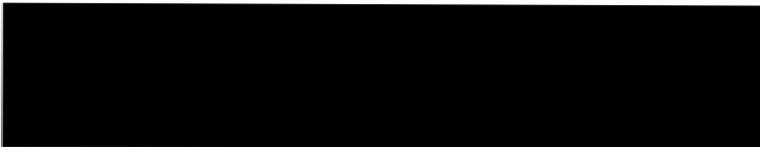


FILE: WAC 07 171 50872 Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2008

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

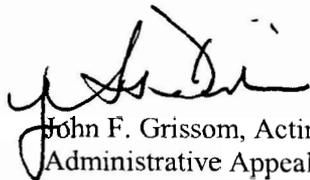
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

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.

  
John F. Grissom, Acting 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 manufacturer of doors, locks, and hardware that seeks to employ the beneficiary as an “operations management and logistics systems trainee” for a period of twenty-one 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 four grounds: (1) that the petitioner had failed to establish that the training is unavailable in the beneficiary’s home country; (2) that the petitioner had failed to establish that the proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States; (3) that the petitioner had failed to establish that the beneficiary will use the training for employment abroad; and (4) that the petitioner had failed to establish that the proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

On appeal, counsel contends that the director erred in denying the petition.

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part, the following:

- (ii) Evidence required for petition involving alien trainee—
  - (A) Conditions. The petitioner is required to demonstrate that:
    - (1) The proposed training is not available in the alien’s own country;
    - (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
    - (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
    - (4) The training will benefit the beneficiary in pursuing a career outside the United States.

- (B) Description of training program. Each petition for a trainee must include a statement which:
  - (1) Describes the type of training and supervision to be given, and the structure of the training program;
  - (2) Sets forth the proportion of time that will be devoted to productive employment;
  - (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
  - (4) Describes the career abroad for which the training will prepare the alien;
  - (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
  - (6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.
  
- (iii) Restrictions on training program for alien trainee. A training program may not be approved which:
  - (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
  - (B) Is incompatible with the nature of the petitioner's business or enterprise;
  - (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
  - (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
  - (E) Will result in productive employment beyond that which is incidental and necessary to the training;
  - (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
  - (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

In its April 23, 2007 letter of support, the petitioner stated the following:

[The petitioner] was incorporated in California in 1983. From the beginning, our management and staff have been dedicated to the needs of our customers. We currently have three warehouses nationally. Our corporate office and main facility is located in Commerce, California, with satellite warehouses in New Jersey and Georgia.

[The petitioner] has focused on providing "Innovative and Value Added" hardware products and accessories to the builders industry. In accepting this charter [the petitioner] has continued to be the leader in import hardware.

With regard to why it is providing the training, the petitioner stated the following:

The purpose of the training program is to provide the trainee with essential knowledge in all areas of [the petitioner's] operations. Specifically, the training program will provide the trainee with a range of skills in the fields of operations, sales, financial management, customer service, human resource[,] and management techniques utilized by the company. This program is designed to prepare the trainee with eventual overseas assignment.

The training program will teach theoretical and practical knowledge and skills applicable to [the petitioner's] operations. Specifically, [the] objectives of the training program are (1) to provide the trainee the basic knowledge of company policies, operations system, particularly in the field of sales operations, human resources and management of our business, with [the] goal of applying these concepts to the international market; (2) to develop analytical and problem-solving skills; (3) to familiarize [the] trainee with the operations and management style of [the petitioner]; [and] (4) to equip the trainee with the relevant practical knowledge in operations, administration, customer service, and management.

The petitioner described its proposed training program as follows:

The proposed training will last 21 months. The trainee will undergo academic instruction and practical training six hours per day, five days per week. The trainee will continue further training sessions only upon successful completion of the prior training sessions. The trainee will receive approximately 75% academic training in class instructions and discussions, and 25% of the training will be in written and oral presentations, and in on-the-job training. It should be noted that the trainee will not engage in any productive employment. The trainee will receive constant instruction and supervision during the entire course of the training program. . . .

As noted previously, the petitioner's proposed training program would last 21 months. It would be broken down into five sections: (1) Sales Management; (2) Financial Management; (3) Customer Service; (4) Human Resource Management; and (5) Data Management. The first section of the proposed training

program would last three months; the second would last four months; the third would last four months; the fourth would last five months; and the fifth would last five months.

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 also found that the petitioner had failed to establish that the proposed training is unavailable in the Philippines, the beneficiary's home country. 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 its April 23, 2007 letter of support, the petitioner stated the following:

It is well known that [the] Philippines has problems with advanced education and training in technology . . . In order to excel in management analysis and logistics, one must be familiar with the use of computer[s] and [the] Internet. However, most Filipinos live below the poverty lines [sic] where computing and [the] Internet are unthinkable frivolities . . . In addition, the lack of facilities, schools that offer computers and access to the Internet also make the knowledge of computers [and] IT knowledge a luxury in the Philippines.

In her July 31, 2007 request for additional evidence, the director stated the following:

The evidence is insufficient to establish [that] the training offered by the petitioner is not available in the beneficiary's home country. State additional reasons and provide evidence that shows why the training cannot be obtained in the beneficiary's own country and why it is necessary for the alien to be trained in the United States [emphasis in original]. . . .

In his October 18, 2007 response to the director's request for additional evidence, counsel repeated, verbatim, the petitioner's paragraph quoted above, and added the following:

Logistics Systems and Operations Management training in hardware products manufacturing and importing is not available in the Philippines as the training will first be focused on the US market, its business environment[,] and the sophisticated hardware manufacturing industry. . . .

[The] Philippines has problems with advanced education and training in healthcare and other fields primarily because of poor elementary and secondary education. . . .

The use of [the] Internet for medical research and management is essential to provide the best medical services to the patients. . . .

Computer use in the medical field is also necessary as experience and solutions in handling unknown diseases and sickness can easily be accessible to the medical providers worldwide. . . .

\* \* \*

Most, if not all, of the petitioner's logistics and management training will be conducted on computers. Thus, the necessary training to be provided to the beneficiary is not available in the Philippines. . . .

In her December 11, 2007 denial, the director stated the following:

USCIS finds the evidence submitted by the petitioner to be both vague and general. The evidence does not directly address the unavailability of logistics and/or management training in the Philippines. Furthermore, the petitioner contends that the beneficiary must have his training in the U.S. primarily because computer access is unavailable in the Philippines. However, this appears to be an exaggeration of the facts, as computers are available and used in the Philippines. In fact, even one of the petitioner's sources for evidence, including the Philippine Headline News Online publishes material accessed exclusively via computer for a primarily Philippine clientele.

In his appellate brief, received at the AAO on February 12, 2008, counsel reiterates his previous assertions and adds, in pertinent part, the following:

USCIS's reasoning for saying the Internet and computer use are not unavailable in the Philippines is overreaching and ignorant . . . It is true that computers and [the] Internet ARE available in the Philippines, but they are scarce and rare. Their availability is not enough. . . .

Petitioner is not contending that computers are not available in the Philippines. Petitioner is merely stating a general fact that based on the articles and reports from other organizations that computers and [the] Internet, are scarce and rare in the Philippines. The access to computers and [the] Internet is not available to everyone in the Philippines, thus making the effective training unavailable in the Philippines. . . .

The record does not support counsel's analysis. First, the AAO finds counsel's assertion that the beneficiary's training "will first be focused on the US market, its business environment and the sophisticated hardware manufacturing industry" deficient. Counsel has submitted no evidence to establish that the United States hardware products market, the United States business environment, or the United States "hardware manufacturing industry" are different from those of the Philippines. 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)). 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).

Further, given that the petitioner is not engaged in the healthcare industry, it is unclear to the AAO why the beneficiary would need to access the internet in order to provide medical services to patients. The

relevancy of counsel's assertions regarding "training in healthcare" and "computer use in the medical field" is also unclear.

Finally, the AAO agrees with the director's assessment that the petitioner has failed to meet its substantive burden. For example, counsel stated that computer and IT knowledge is "a luxury" in the Philippines and that, for most Filipinos, "computer and Internet surfing are unthinkable frivolities,"<sup>1</sup> and submits evidence regarding its educational system.<sup>2</sup> The issue to be addressed is not whether the Filipino economy is less advanced than that of the United States. Nor is the issue whether every single person in the Philippines has access to a computer. The issue is whether similar training is available in the Philippines. The Philippines possesses many well-established, and well-respected, colleges and universities. Many of these schools offer computer training.<sup>3</sup> The AAO also takes note here that many United States firms have outsourced information technology functions to the Philippines.<sup>4</sup> This does not necessarily demonstrate that training programs similar to that proposed here exist in the Philippines, but it does undermine the evidence submitted by the petitioner. Given that the premise of the petitioner's argument regarding the unavailability of operations management and logistics systems training in the Philippines is its assertion regarding the unavailability of computer training in the country, the failure to provide evidence of such undermines its claim. The petitioner has not established that similar training is unavailable in the Philippines. It has not satisfied 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) or 214.2(h)(7)(ii)(B)(5).

The director also found that the petitioner had failed to establish that the proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. **The AAO disagrees.** The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(F) requires the petitioner to demonstrate that the proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. The record does not indicate that the petitioner's motivation for designing the training program is to recruit and train aliens for the ultimate staffing of its domestic operations in the United States. Accordingly, the AAO withdraws that portion of the director's decision finding otherwise.

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<sup>1</sup> As of April 2007, the Philippines had 14,000,000 internet users. See <http://www.internetworldstats.com/asia.htm> (accessed October 29, 2008).

<sup>2</sup> A simple google search reveals that many colleges and universities offer undergraduate and graduate training in computer science. See, e.g. [http://www.engg.upd.edu.ph/cs/undergraduate\\_program.html](http://www.engg.upd.edu.ph/cs/undergraduate_program.html) (accessed October 29, 2008); see also [http://www.engg.upd.edu.ph/cs/graduate\\_program.html](http://www.engg.upd.edu.ph/cs/graduate_program.html) (accessed October 29, 2008); see also <http://www.ics.uplb.edu.ph> (accessed October 29, 2008).

<sup>3</sup> The AAO notes that, according to her college transcript, the beneficiary was able to access two computer education classes during the 1988-89 academic year, nearly twenty years ago.

<sup>4</sup> See, e.g., [http://www.businessweek.com/print/globalbiz/content/sep2006/gb20060919\\_639997.htm](http://www.businessweek.com/print/globalbiz/content/sep2006/gb20060919_639997.htm) (accessed October 29, 2008): "[The] Philippines gets high marks for its large educated talent pool and English language skills . . . [t]he recent growth spurt in the outsourcing industry in the Philippines has been fueled not by traditional low-valued-added call centers but by more higher-end outsourcing such as legal services, Web design, medical transcription, software development, animation, and shared services. . . ." See also <http://www.computerworld.com/action/article.do?command=viewArticleTOC&specialReport+ID=360&articleID=84815> (accessed October 29, 2008): "[T]he Philippines' popularity [for IT outsourcing is due to] its English proficiency, a highly skilled workforce (380,000 college graduates annually) . . . [T]here are about 10,000 software programmers nationwide."

The director also found that the petitioner had failed to establish that the beneficiary will use the training for employment abroad. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to describe the career abroad for which the training will prepare the alien.

In her July 31, 2007 request for additional evidence, the director stated the following:

Explain how the knowledge or skills acquired in the proposed training will benefit the beneficiary in pursuing a career outside the United States. Provide evidence to show that there is a career abroad for which the training will prepare the beneficiary. . . .

In its October 18, 2007 response to the director's request for additional evidence, the petitioner stated the following:

After successful completion of the training, the trainee will return to her home country to initially establish a lead for the petitioner's expansion project. The beneficiary will not only perform the managerial tasks, but will initially serve as a training resource for [the] petitioner's future employees in the Philippines. . . .

With the training in logistics systems and operations management, it will make her a more marketable candidate when she returns to her home country. . . .

In her December 11, 2007 denial, the director stated the following:

One the one hand, the petitioner states that the beneficiary will use her training to expand the petitioner's business in the Philippines. On the other hand, the petitioner indicates that the beneficiary will use her training to find a better, as yet unidentified, job. Furthermore, there is no evidence that the petitioner has any offices, affiliations, etc. in the Philippines.

As such, the record is insufficient to establish that the beneficiary will use her training for employment abroad. . . .

Counsel states the following on appeal:

[The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4)] only requires [the] petitioner to include the possible career options abroad for which the proposed training will prepare the alien. It does not require the alien to work for the employer or anyone else after the training but only that [the] training could prepare the alien for a possible career abroad. Petitioner has contemplated in expanding its operations into the Asian countries. Should the alien complete the training successfully, the petitioner will be more confident in setting up the overseas office. However, if there is any delay in setting up the overseas office, [the] alien can rely upon the knowledge gained from the training to find a better job and make herself more marketable for a career in her home country. The conclusion drawn by USCIS that the alien cannot have multiple career options abroad is absurd and unfounded. . . .

The AAO finds counsel's argument deficient. Counsel's assertion that the beneficiary "will make [the] beneficiary a more marketable person" is deficient for two reasons. First, this vague reference to an undefined position is too general of a description to satisfy the regulation. Second, stating that the beneficiary would become "more marketable" as a result of her newfound training, and thus implying that she could work for an entity other than the petitioner, conflicts with assertions made by counsel and the petitioner elsewhere in the record. As noted previously, both counsel and the petitioner have made repeated assertions regarding the lack of computer and internet training in the Philippines.

Given the assertions of counsel and the petitioner regarding the lack of access to computers in the Philippines, and that the lack of access to such technology is so acute in that country that the beneficiary is unable to find training there (and must travel to the United States in order to receive it), it is unclear to the AAO what type of position she would be able to fill in the Philippines as a result of having obtained the training, if she is not to work for the petitioner. The petitioner has not established that companies or organizations would employ the beneficiary in the Philippines with access to the computers and information technology that the beneficiary will use during her training.

For all of these reasons, the AAO finds counsel's argument that the proposed training "will make [the] beneficiary a more marketable person" deficient. The AAO agrees with the director's analysis regarding the lack of career opportunities in the Philippines. Since the beneficiary's newfound knowledge (the knowledge that cannot be obtained in the Philippines) will be specific to the petitioner, it appears that an operation run by the petitioner would be the only setting in which she would be able to use the 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 particular case, since the proposed training is specific to the petitioner, and the only setting in which the beneficiary would utilize her skills would be for the petitioner in the Philippines, the petitioner must document that it actually has plans to commence operations in the Philippines upon completion of the training. The record, as presently constituted, contains no information or evidence of the petitioner's expansion plans, beyond training the beneficiary. Nor has the petitioner submitted any evidence, beyond the assertions of record, to demonstrate that it is in the process of setting up operations in the Philippines. 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)). The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

The petitioner has failed to establish that its proposed training program will benefit the beneficiary in pursuing a career outside the United States. It has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4).

Finally, the director found that the petitioner had failed to demonstrate that its proposed training program was not on behalf of a beneficiary who already possesses substantial training and expertise in the field. The AAO agrees. 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.

As noted previously, the proposed training program consists of five phases: (1) Sales Management; (2) Financial Management; (3) Customer Service; (4) Human Resource Management; and (5) Data Management. The record indicates that the beneficiary earned a bachelor's degree in commerce, with a major in accounting, from the University of San Agustin, in the Philippines, in March 1989. Her college transcript indicates that she took the following relevant courses: Principles of Accounting; Business Mathematics; Partnership & Corporation Accounting; Financial Accounting I, II, and III; Money, Credit, & Banking; Principles of Marketing; Principles of Economics including Cooperative and Consumer Education; Principles of Management Organization; Business Communications; Economic Analysis; Philippine Banking Systems; Cost Accounting; Obligations & Contract; Business Statistics; Philippine Business; Process Cost Systems; Advanced Accounting I, II, and III; Industrial Management; Agencies, Sales, Mortgage & Leases; Quantitative Technique in Business; Managerial Accounting; Computer Education I and II; Partnership & Corporation; Auditing Theory; Taxation I; Management Advisory Services; Auditing Problems & Practice; and Mercantile Law. Further, the beneficiary worked as a sales assistant between 1993 and 1998, as an I.T. Support Representative between 1998 and 2001, and as a Senior I.T. Support Representative between 2001 and 2007.

As was noted earlier in this decision, the premise of the petitioner's argument regarding the unavailability of operations management and logistics systems training in the Philippines is its assertion regarding the unavailability of computer training in that country. The petitioner, therefore, has made computer training a central component of the training program. However, the record indicates that the beneficiary has been working in the field of information technology since 1998. It also appears that many of the courses the beneficiary took while earning her degree are directly relevant to the training proposed in this petition.

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 record establishes that the beneficiary 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).

Pursuant to the above discussion, 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 three additional reasons.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to describe the type of training and supervision to be given, and the structure of the training program. The information contained in the record of proceeding is vague in nature, and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis. For example, the first section of the proposed training program would last three months. The petitioner's description of what the beneficiary would actually be doing consists of less than half of one page, and is presented in bullet-pointed summaries. While it contains topics to be covered, there is no indication as to how those topics will be covered. No information, such as sample lesson plans, is submitted to make up for this summary explanation. The petitioner's description is deficient, as it fails to provide the AAO with any meaningful description of what the beneficiary would actually be doing.

The petitioner's description of the rest of its proposed training program suffers similar deficiencies. The petitioner's description of how the beneficiary would spend her time consists of summary outlines

without specific descriptions of the daily training program. Lists of goals and objectives are not substitutes for descriptions of how those goals and objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing during this time. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(I). For this additional reason, the petition may not be approved.

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.

The AAO here incorporates its previous discussion regarding the petitioner's vague and generalized description of its training program. While the petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program. It has failed to establish that its proposed training program does not deal in generalities. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). For this additional reason, the petition may not be approved.

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 July 31, 2007 request for additional evidence, the director requested a copy of the petitioner's Form DE-6, California Quarterly Wage Report, as well as a list of all employees including their names, job titles, and current immigration statuses and a line and block organizational chart. Regarding the organizational chart, the director requested one:

showing [the petitioner's] hierarchy and staffing levels. The chart should include the current names of all executives, managers, supervisors, and employees within each department or subdivision. Clearly identify the beneficiary's position in the chart. List all employees by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages (in United States Dollar equivalents) and immigration status (L-1, H-1B, B-1, E-1, E-2, F-1, permanent resident, citizen, etc.) for all employees [underlining in original].

In response, the petitioner submitted an October 22, 2007 letter in which it stated the following:

[W]e find your request unreasonably overbroad, burdensome, and constitutes an invasion of privacy to our employees. But in order to comply with your request, we submit an Organizational Chart with names and job titles for the key personnel at the company.

We respectfully ask you not to deny our petition based on our concern and hesitation in providing confidential information about our employees to USCIS.

The organizational chart submitted by the petitioner did not provide job duties, educational levels, annual salaries, or immigration status for the employees it named.

The information requested by the director would corroborate the petitioner's statement on the Form I-129 that it employs 50 people and was within the director's discretion to request. Moreover, job duties, educational levels, salaries, and immigration status would have allowed the director to determine whether the petitioner in fact has the personnel to provide the training set forth in the petition. The petitioner identified no specific statutory or other authority to invoke a privilege or immunity against disclosure in these proceedings, other than the vague statement that the request was an "invasion of privacy."

The petitioner may not unilaterally make a determination that a requested item is "unreasonably overbroad, burdensome" and refuse to submit that item while offering no substitute or alternative evidence to satisfy the concern of the director. Without information regarding the backgrounds of the petitioner's employees, the record, as it currently stands, fails to establish that anyone on the petitioner's staff is qualified to provide the training set forth in this petition. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has failed to establish that it has sufficiently trained manpower to provide the training described in the petition. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G). For this additional reason, the petition may not be approved.

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.