U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 07 200 54522 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2009

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as nonimmigrant 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 petitioner, a retailer of health and beauty products, seeks to employ the beneficiary as a management and business administration trainee for a period of 18 months.

The director denied the petition on two separate and independent grounds noting that the petitioner: (1) failed to describe with specificity the type of training and supervision to be given, and the structure of the training program; and (2) failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified.

On appeal, the petitioner asserts that it has the facilities and manpower to train the beneficiary, and contends that it provided a sufficient detailed description of the structure of its training program.

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.

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, Notice of Appeal or Motion. The AAO reviewed the record in its entirety before issuing its decision.

The first issue to be addressed is whether the petitioner provided an adequate description of its training program as required by the regulation at 8 C.F.R. 214.2(h)(7)(ii)(B). The regulation at 8 C.F.R. 214.2(h)(7)(ii)(3)(A) prohibits the approval of a training program which deals in generalities with no fixed schedule, objectives or means of evaluation.

The petitioner filed the nonimmigrant petition on June 22, 2007. The petitioner indicated on Form I-129 Supplement H that the petitioner plans to provide the beneficiary with the skills necessary to open a wholesale and retail branch of the company in Israel in 2010. The petitioner was established in 2005 and states that it sells cosmetics products "across the United States." The company claimed to have six employees and gross receipts in excess of $1.5 million for 2006.

In a letter dated May 30, 2007, the petitioner described its training program as follows:

> [The petitioner] has an established training program which is designed to provide the trainee with an extended set of skills and a broader base of knowledge and work experience opportunities in the retail and business management industry. In addition, it is intended to impart business knowledge including administration, financial awareness and marketing skills.
>
> This training program for our trainees provides parallel training in the procedural and substantive aspects of retail management training in the US and in the international world market. The training program in its entirety covers an eighteen month period (18). The training program is designed for young motivated high school graduates that have demonstrated business and management skills or other achievements and it provides our trainees with excellent exposure to the field of business and management.
>
> The training program . . . covers two (2) distinct aspects, involving formal classroom training and rotational assignments to each of the groups within the Washington retail industry structure.
>
> Every effort is made to have the trainee rotate through each of our available departments to provide maximum exposure and training for each of our trainees.
>
> The classroom training will include formal instructional exercises and extensive reading of management books and working through workshops. The trainee will be requested to prepare research and slides, as well as a monthly thesis and written articles in different management issues. . . .
>
> The remainder of the program will include on the scene observation and question periods.

The petitioner further indicated that components of the training program would include classroom/office training and "incidental training at retail locations, including shadowing management and observation of senior staff." The petitioner noted that the proportion of classroom/office training versus "in the field" training would be approximately 50-50.

The petitioner also submitted a training plan, which stated the following regarding the beneficiary's "Supervision and Evaluation" during the program:

> The Trainee will report to the overall managers as well as other bodies within the company according to specific task specifications and level of overall feedback required. . . . The trainee will have ongoing interaction and feedback from his supervisor as well as other senior executives in the company.

The training plan indicated that the beneficiary's training would be held 40 hours per week and would include the following phases, with each phase lasting three months: (1) Basic Operations and Research; (2) Human Resources and Administration; (3) Main Office and Computing; (4) Quality Control and Stock Ordering; (5) Marketing and Advertising; and (6) Supervised Project. The petitioner indicated that the beneficiary would be supervised and evaluated by either the general manager or a supervisor throughout the 18 month training period.

The director issued a request for evidence (RFE) on July 2, 2007, in which she instructed the petitioner to discuss in further detail the type of training to be given, the structure of the training, the objectives of the program; the supervision to be given; and the number of hours that will be devoted to classroom instruction, on-the-job training, and productive employment.

The director also instructed the petitioner to describe the kind of materials to be used in classroom training, and how the petitioner will evaluate the beneficiary's performance. Finally, the director requested evidence to substantiate the petitioner's training program, including copies of past and proposed training materials; a copy of the petitioner's standard trainee performance appraisal and evaluations from trainees; and documentation related to the most recently completed training course conducted by the petitioner.

In a response dated September 20, 2007, the petitioner provided more detailed information regarding the proposed training program. The response included graphs for each three-month phase of the training program, which depict the amount of time devoted to classroom, one-the job training, and supervised work experience. The petitioner indicated that the beneficiary would be in training for a total of 65 hours per week. The beneficiary's classroom training would range from 40 hours in the first six months, to 35 hours during the third training phase, to 30 hours during the fourth and fifth phases, and finally, 25 hours in the final phase. The beneficiary's "on-the-job" training, according to the graphs, would range from 15 to 25 hours, and the beneficiary's supervised work experience would amount to 10 hours per week during the first five phases of the program and 15 hours per week during the last phase.

The petitioner provided a chart listing the objectives of each phase of the training program, and two examples of a daily lesson plan. The petitioner also submitted a list of textbooks to be used during the program, and a "standard performance appraisal" form that would be used to mark the beneficiary's progress.

Counsel for the petitioner stated that the petitioner could not provide copies of past training materials because "this is the first time that a substantial scheduled training program has been exerted."

The director denied the petition finding that the petitioner failed to adequately describe its training program as required by the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B). The director noted that there is no evidence that the petitioner has provided the training in the past or on a regular basis, and noted that most of the training, as described by the petitioner will involve "shadowing" supervisors and on-the-job training.

On appeal, the petitioner states that it described "in intense detail the hours, structure and objectives of the entire 18 months." The petitioner asserts that due to the nature of the business, the beneficiary will be required to observe the company's senior employees rather than engaging in extensive formal classroom training.

Upon review, the AAO concurs 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.

While the petitioner submitted a fairly detailed response to the director's request for additional specific information regarding the program, the AAO notes that there are significant inconsistencies in the record which raise doubts regarding the existence of a bona fide, H-3 caliber training program.

The petitioner indicated at the time of filing that it has "an established training program," and the description of the training program provided in the petitioner letter dated May 30, 2007 suggested that the program has been offered to and completed by other trainees. For example, the petitioner stated that the "management program is designed for young motivated high school graduates," and noted that it seeks to "provide the maximum exposure and training for each of our trainees." However, in response to the director's request for evidence regarding previous training programs and their participants, the petitioner indicated that it has not previously provided a training program. This is a significant discrepancy that cannot be overlooked.

Furthermore, the training plan submitted as of the date of filing explicitly stated that the training would be provided 40 days per week and would consist of formal classroom training and "rotational assignments" through the petitioner's "available departments." There was no mention of supervised productive employment. In response to the RFE, the petitioner submitted a breakdown of how the beneficiary's time would be allocated, indicating that he would be participating in the program 65 hours per week. The petitioner provided no explanation for the additional 25 hours of training per week added to the schedule, or the addition of 10-15 hours of supervised productive employment. Furthermore, although the petitioner appears to concede on appeal that most of the training will be on-the-job observation or "shadowing" of the petitioner's employees, the petitioner's response to the RFE indicated that the beneficiary would spend 30 to 40 hours in classroom training during most of the program.

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.

Finally, the AAO notes that several documents submitted in response to the RFE, including the graphic depiction of the time allocated to various aspects of the training program, the chart depicting the training program objectives, the lesson plans, the course material description, and the "standard performance appraisal" form are identical in format to documentation submitted with another unrelated petition (WAC0721753501) and therefore do not appear to have been prepared by the petitioner. Rather, it appears that these documents were prepared by counsel and as such can not be accepted as representing a bona fide training program created by the petitioner and in existence at the time the petition was filed.

In this case, the unresolved discrepancies catalogued above lead the AAO to conclude that the petitioner's descriptions of its training program are not credible. Therefore, the AAO concurs with the director's conclusion that the petitioner failed to submit an adequate description of its training program as required by 8 C.F.R. § 214.2(h)(7)(ii)(B).

The second issue addressed by the director is whether the petitioner established that it has they physical plant and sufficiently trained manpower to provide the training specified, as required by at 8 C.F.R. § 214.2(h)(7)(iii)(G).

At the time of filing, the petitioner indicated that it employs six people, and stated that its business address is located at 3333 164th Street, #1738, Lynwood, Washington, 98087. The petitioner indicated that the beneficiary will work at this address during the training period. The petitioner also stated on Form I-129 that the beneficiary currently resides at this same address while in the United States in B-2 status.

In the RFE issued on July 2, 2007, the director requested that the petitioner describe the training facilities, and indicate whether the petitioner has a regular, full-time training facility for the provision of year-round training. The director also requested information regarding the number of trainers on the petitioner's training staff and additional information regarding what the trainers do when not providing training, if applicable. The director also requested: (1) a floor plan for the petitioner's training facilities, including classrooms and on-the-job locations; (2) photographs of the inside and outside of all training facilities, with current trainees and instructors clearly visible and identified; (3) a more detailed description of the petitioner's business, such as copies of brochures or the petitioner's website address; (4) copies of Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2005 and 2006, and the first quarter of 2007 evidencing wages paid to employees; (5) a list of all employees working for the company; (6) a copy of the petitioner's line and block organizational chart showing its hierarchy and staffing levels; (7) photographs of the petitioner's business premises, including any company logos, emblems or signs displayed on and in buildings and on products; (8) copies of the petitioner's business licenses; and (9) a complete copy of the petitioner's lease agreement for all leased premises.

In response to the director's request, the counsel for the petitioner indicated that the beneficiary will report to the company president while his everyday supervision and evaluation would be carried out by a "VP (General Manager)." Counsel stated that "the training will take place in the organization's office areas and the work place. The companies [sic] foremost work areas are in shopping malls, and in the storage houses."

The petitioner submitted a copy of its Form 941 for the first quarter of 2007 which shows that the company paid wages of $5,275.38 to "0" employees. The petitioner submitted a payroll statement for the company "A&B United LLC" for August 2007 which shows that the petitioner's CEO and both of its claimed vice

presidents were paid by this company during that month. The petitioner did not explain the significance of this document and it appears to have been submitted to represent the petitioner's own claimed staffing levels.

In response to the director's request for copies of the company's Forms 941 for 2006, the petitioner submitted a Form 941 for the fourth quarter of 2006 showing 13 employees, a Form 941 for the second quarter of 2006, showing zero employees; and two different Forms 941 for the second quarter of 2006, one showing approximately $10,000 in wages paid to three employees, and one indicating approximately $27,000 in wages paid to "0" employees. The AAO notes that all of the purportedly Forms 941 for 2006 were prepared on the Form 941 for 2007 (Rev. 1-2007) and not on the 2006 version of the form. The number "7" has been crossed out and replaced by a "6." Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The petitioner submitted an organizational chart for the U.S. company depicting a total of eleven employees, including the beneficiary's proposed trainee position. The chart indicates that the company employs a CEO, two vice presidents, four sales persons, two secretaries, and a warehouse driver.

Finally, the petitioner submitted:

1. A summary of lease terms for apartment located at [redacted] Lynnwood, Washington, which lists the petitioner's CEO and two vice presidents as occupants of the apartment.
2. Photographs of "the training & on-job training areas." The petitioner submitted three photographs. One depicts a small storage space with boxes of unidentified products located at "Alderwood Safe Storage"; one depicts a small office with two desks and computer workstations; and the other depicts a kiosk in a shopping mall that is doing business as "Natural Beauty."
3. A business license issued by the City of Tukwila, Washington to "Soctr Kiosk/A&B/Super Steam" to operate a retail cart selling iron products at 633 Southcenter Mall in Tukwila.
4. A business license issued by the City of Tukwila, Washington to "Dead Sea Kiosk (A&B United)" to operate a retail cart selling salts and lotions at 633 Southcenter Mall in Tukwila.
5. Two 2007 Annual Business Licenses issued by the City of Tacoma for kiosk businesses located at 4502 S. Steele Street. The licenses were mailed to "A and B United LLC d/b/a Kiosk Planet," at the petitioner's claimed business address.

The director denied the petition, concluding that the petitioner does not have the physical plant and sufficient trained manpower to provide the training specified, and therefore the petition cannot be approved, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(G). The director noted that it is clear from the petitioner's evidence that the company has no regular training facilities or personnel involved in training. The director noted that the petitioner did not identify a training division, and the petitioner failed to submit requested evidence regarding its training facilities.

On appeal, the petitioner asserts that its office provides adequate space for the beneficiary to be trained. The petitioner asserts that all training will be provided directly by the CEO himself.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not documented that it has facilities and trained manpower to carry out its proposed training program.

The petitioner was specifically requested to submit copies of lease agreements, photographs, and business licenses for all of its business locations. It submitted a lease agreement for a single location - a residential apartment with three occupants - which is claimed to be the petitioner's primary business address. While the petitioner submitted a generic photograph of an office, the location of such office remains unclear and it cannot be determined based on the evidence presented that the petitioner has any location outside its executive officers' home.

The petitioner submitted a photograph of a small storage space, but provided no evidence that this space is leased by the company. Similarly, the petitioner submitted a photograph of a retail kiosk in a shopping mall, but provided no lease that would establish the location of the business, or identify the petitioner as the operator of the business. While business licenses for four retail kiosk businesses were provided, none of these licenses were issued to the petitioning company. 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 submitted evidence to establish that it actually leases or owns the claimed office, retail and warehouse spaces where training would allegedly be provided.

Moreover, the petitioner has not provided a consistent account of its organizational structure. The petitioner claims to have six permanent employees, but appears to have been paying no employees at all as of March 2007. The evidence submitted shows that a different company, A & B United LLC, was paying the petitioner's senior staff as of August 2007. The petitioner's Forms 941 for 2006 are not credible as the petitioner has not explained why its 2006 quarterly tax returns were prepared on the 2007 version of the Form 941. The petitioner's organizational chart as of September 2007 appears to include H-2B employees who were only authorized to work for the company through January 2007.

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. at 591-92. The AAO cannot determine based on the evidence submitted how many employees, if any, were working for the petitioner as of the date the petition was filed. This information is critical in a training situation in which there are apparently no full-time trainers, as the petitioner must demonstrate that it has staff to carry out normal operations during the proposed training period.

Finally, the petitioner has failed to explain how, if the beneficiary will be principally trained by the petitioner's CEO for a period of 18 months, the CEO's normal workload will be performed during that time. 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*, I&N Dec. at 591. The petitioner has failed to establish that it has the physical plant or 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.

Beyond the decision of the director, the petitioner has failed to establish that the proposed training could not be obtained in Israel, the beneficiaries' home country. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) requires the petitioner to demonstrate that the proposed training is not available in the alien's own country, and 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*) requires a statement from the petitioner indicating the reasons why the proposed training cannot be obtained in the alien's home country and why it is necessary for the alien to be trained in the United States.

The AAO notes 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 offers this training in the alien's home country. Whether the petitioner itself offers similar training in the beneficiary's home country is not the issue; 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.

In the present case, the stated reason for creation of the training program is to train the beneficiary to open a branch of the petitioning company oversees. However, the petitioner has not established that its business practices are so unique that such knowledge could not be obtained from a retailer offering similar products. As noted above, the petitioner claims to sell cosmetics and beauty products from retail carts or kiosks located in shopping malls. It's business operations have not been shown to be unusual or complex in any way.

In the RFE, the director requested that the petitioner submit publications, letters from business or trade organizations, or affidavits or declarations from recognized authorities certifying as to the unavailability of the proposed training in the beneficiary's home country. The director advised that a recognized authority is a person or organization with expertise in a particular field and the expertise to render the type of opinion requested. The director noted that opinions from recognized authorities must state the writer's qualifications as an expert; the writers experience giving such opinions; cite specific instances where past opinions have been accepted as authoritative and by whom; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used.

The petitioner has submitted letters, not declarations or affidavits, from Dead Sea Premier Cosmetics, Ltd., an Israeli cosmetics manufacture; from Overbreak, L.L.C., a California-based supplier of shopping mall cart and kiosk businesses, and Swisa Beauty Ltd., a United Kingdom-based beauty product company.

The letter from Swisa Beauty states that the company is "not familiar with any other training programs in Israel in the field." It states that there are no companies in Israel that offer remunerated management training courses or teach apprentices who do not possess an MBA. Swisa Beauty's letter further indicates that the company does not offer remunerated 18 month training course to apprentices in Israel because it does not have "the facilities, time or appropriate means to invest in the program." The letter is not signed and no company representative is named. Therefore it is unclear whose opinion is expressed in the letter or whether the person has the educational or industry background to offer such opinion. There is no evidence that Swisa Beauty, a United Kingdom company which lists a U.S. office on its letterhead, even has any operations in Israel or is familiar with the Israeli retail business market, so its pronouncements with respect to the type of training available in Israel are not probative. Furthermore, the letter indicates that the company's products are

sold in kiosks and department store worldwide, including in Israel, which would suggest that there are companies in Israel operating the exact same type of business as the petitioner whose employees have likely been trained in Israel. This letter does not support the petitioner's claim that the training to be provided is unavailable in Israel.

The letter from Overbreak, LLC is signed, but the name, job title and qualifications of the person expressing the opinions in the letter has not been provided. The letter indicates: "we don't recall any familiarity regarding such a training program in Israel or in the USA in any international or national company." The letter states that "Israel has a very small market of retail companies," and states that "any apprentice from Israel should be honored to receive an opportunity to experience a typical American business." The author of the letter states no basis for the conclusions reached in the letter. Moreover, the author of the letter does not state that similar training is unavailable in Israel; he simply states that he is unaware of similar training The petitioner has not established the reliability and accuracy of the pronouncements made by the unknown author of the letter, and this submission is therefore not probative of any of the criteria at issue here.

The letter from Dead Sea Premier Cosmetics Ltd suffers from similar deficiencies. It is a letter rather than a declaration or affidavit signed under penalty of perjury. The name, title and qualifications of the person providing the letter have not been provided. The author simply states that the company has "not come across any company in Israel or in the USA whom offers this type of training program." The statements made in this letter are not probative and do not establish that training in retail business management is unavailable in Israel.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Finally, the petitioner submitted two published articles that generally reference the business climate in Israel; however, the articles make no mention of the availability or unavailability of training in the retail business management field. The AAO is not persuaded that training in managing a small retail business could not be obtained in the beneficiary's home country of Israel. The petitioner has failed to satisfy the regulations at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(*1*) and 214.2(h)(7)(ii)(B)(*5*). For this additional reason, 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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused it discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. at 1043.

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.