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U.S. Citizenship
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Services

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[redacted]

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FILE: WAC 07 179 50620 Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2008

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.

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 is an audio and video repair company that seeks to employ the beneficiary as a management trainee for a period of twenty-two 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 six grounds: (1) that the petitioner had failed to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States; (2) that the petitioner had failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (3) that the petitioner had failed to describe the type of training and supervision to be given; (4) that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; (5) that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training; and (6) 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.

On appeal, the petitioner 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 May 25, 2007 letter of support, the petitioner stated the following:

> [The petitioner] has focused on providing "Innovative and Value Added" audio and video products and services to the electronics industry. [The petitioner] installs, services, and repairs a wide variety of electrical and audio and video equipments [sic] including television receivers, radio of all types, stereo components like recorders, speakers, amplifiers and tuners, electronic musical instruments, video laser disc and audio compact disc players, home burglar and fire alarm systems, telephones and pagers, and video game machines.

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

> [T]he goal of the training program is to prepare highly competitive professionals for the company's potential expansion in Asia.

The petitioner described the proposed training program as follows:

> The proposed training will last 22 months. The trainee will undergo academic instruction and practical training six training 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 80% academic training in class instructions and discussions, 5% will be in case study, 10% will be in presentation, report writing style, effectiveness of communication, [and] overall appearance, and 5% of the training will be in quizzes and exams and on-the-job training. . . .

The petitioner explained that its proposed training program would be broken into eleven sections: (1) Introduction to Audio Video Repair Shops and to [the petitioner]; (2) Financial Management of Repair Shop; (3) Customer Service of Repair Shop; (4) Other Aspects of Repair Shop Management; (5) Inventory Management of Repair Shop; (6) Technical Management – Introduction to TV; (7) Technical Management – LCD Technology; (8) Technical Management – Plasma Technology; (9) Technical Management – High Definition Technology; (10) Technical Management – Digital Video; and (11) Technical Management – Stereo.

On appeal, the petitioner amends the training program. While it initially filed the petition for a management trainee, on appeal the petitioner explains that the beneficiary is currently working for it as a junior technician,[1] and that she is being trained to "handle and resolve" the following: (1) troubleshooting; (2) replacing defective parts; (3) completing alignments; (4) repairing connections on input board assemblies; (5) dissembling units; (6) cleaning and checking lenses and mirrors, and adjusting focus screens; (7) cutting out and removing lamp thermal sensor connectors; (8) hardwiring sensors into

[1] The legal basis for this employment is unclear.

circuits; (9) aligning electrical and tape pads; and (10) checking computer chips. The petitioner stated that the beneficiary is also currently working for the petitioner in its ordering and shipping department.

The petitioner makes other changes on appeal as well. Although it initially stated that the beneficiary would spend 80% of her time in classroom instruction and discussion, the petitioner now states that the beneficiary spends thirty hours per week training at the petitioner's facility, and that she has enrolled in an online training course:

> [The beneficiary] is enrolled in on-line courses at Penn Foster Career School for a period of 52 lessons in "Electronics Technician" to enhance her understanding of the overall science of technology, past, present and future.[2]
>
> The course will take between 10 and 15 hours per week [underlining in original].

The AAO finds that the changes made to the proposed training program on appeal do not clarify the proposed training program or submit additional details to fill in missing information. Rather, they constitute a material alteration to the proposed training program as set forth initially. However, 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). On appeal, 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). 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. *Id.*

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 found that the petitioner had failed to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States. 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.

As noted previously, the petitioner stated in its letter of support that "the goal of the training program is to prepare highly competitive professionals for the company's potential expansion in Asia."

In her January 2, 2008 denial, the director stated the following:

> The record indicates that if the beneficiary successfully completes the training program she will be offered a job in the petitioner's branch office in the Philippines. The petitioner[,] however, states that "The beneficiary will research and set up a branch office for the company and lead a new team to expand our business." This statement indicates that a branch office does not currently exist in the beneficiary's home country. The petitioner provides no evidence of pending contracts, a business plan[,] or facility photographs that show where or when the stated branch office will come into

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The record indicates that the beneficiary paid the Penn Foster Career School's $829 registration fee for these online courses.

> existence . . . Therefore, at this time the petitioner has not established that there is currently a career abroad for which the beneficiary would utilize her learned knowledge upon completion of the petitioner's training program. Consequently, the petitioner [has] not shown eligibility at the time of filing.

On appeal, the petitioner states that it intends to open a branch in the Philippines; that it is negotiating with the owner of the Zyla Cellushop, a cell phone repair company, to enter into a business partnership; and that having a business partner in the Philippines will eliminate the problem of having to establish a brand new business in that country. The petitioner also submits a letter from [redacted]e, owner of the Zyla Cellushop, dated January 8, 2008, stating the following:

> [The petitioner] and I are in the process of combining and expanding my service center business, to include a service center for all high end TV and audio equipment. We will be equal partners in this business venture.

The AAO agrees with the director's analysis, and finds two problems with the petitioner's explanation. First, and as noted previously, [redacted]'s letter is dated January 8, 2008. Even if the AAO were to accept this letter at face value, there is no evidence in the record of proceeding to indicate that the petitioner had any concrete plans for such expansion at the time the petition was filed. 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).

Moreover, there is no evidence in the record to document any of the assertions made in Mr. Lagare's letter. As noted by the director, the record contains no evidence of pending contracts, business plans, or facility photographs to document the petitioner's expansion plans. The record contains no documentary evidence of the petitioner's expansion plans, beyond training the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the proposed training would prepare the beneficiary in pursuing a career abroad, working for the petitioner.

Nor does the AAO find that the proposed training would benefit the beneficiary in pursuing a career with a company other than the petitioner. Counsel asserted in his October 18, 2007 response to the director's request for additional evidence, that the proposed training "will make her a more marketable candidate when she returns to her home country." This statement 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. Both counsel and the petitioner have made repeated assertions regarding the lack of computer and internet training in the Philippines. For example, the petitioner stated the following in its letter of support:

> It is well known that [the] Philippines has problems with advanced education and training in technology and other fields primarily because of poor elementary and secondary education, lack of qualified faculties and shortage in facilities and weaknesses in planning, budgeting[,] and implementing processes. In order to excel in management

> analysis and logistics, one must be familiar with the use of the Internet. However, most Filipinos live below the poverty lines [sic] where computing and [the] Internet are unthinkable frivolities. The lack of adequate infrastructure to deliver basic social services also contributes to the inadequate technologies. 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.

Counsel reiterated this paragraph in his response to the director's request for additional evidence, and added the following:

> 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. . . .[3]
>
> The Philippines does not have the resources and technology of its own but has to be dependent on imported technologies to advance its own development in the technological world.
>
> [T]he technical education and accessibility to computers and other information needed in the healthcare field are very limited in the Philippines. 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.

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. If the assertions of counsel and the petitioner are correct, then it is unclear to the AAO what types of companies or organizations that would employ the beneficiary in the Philippines would have access to the computers and information technology that the beneficiary will utilize during her training. Therefore, the AAO finds deficient counsel's assertion that the proposed training "will make [the beneficiary] a more marketable candidate when she returns to her home country."

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[3] Given the goals and objectives of the petitioner as set forth in the record of proceeding, it is unclear to the AAO why the beneficiary would need to provide "medical services to the patients" or why the beneficiary would need to handle "unknown diseases and sicknesses." 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.

For all of these reasons, the AAO finds that the petitioner has failed to establish that the proposed training 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*).

The director also found that the petitioner had failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation. The AAO agrees. 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 incorporates here its previous discussion of the amendments made to the training program by the petitioner on appeal. The magnitude of the changes to the proposed training program on appeal do not indicate the existence of a training program with a fixed schedule or objective. For example, the beneficiary was originally to spend 80% of her time in academic instruction with the petitioner's trainers. Now, she is to spend "10-15 hours" (approximately 33%) of her time taking online courses at a learning center (for which it appears she has paid for herself) and studying. Also, she has been transformed from a "management trainee" to a junior technician.

Nor is the means of evaluation clear. For example, according to the training plan outline submitted by the petitioner at the time the petition was filed, 15% of the beneficiary's final grade was to be based upon "class participation." However, as the classes are no longer to be held in the petitioner's training room, but rather online, it is unclear to the AAO how the petitioner would measure the beneficiary's participation in class.

Finally, the AAO notes that the information submitted by the petitioner on appeal 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 22 months. Given the vast difference between the petitioner's description of the training program on appeal and the description it provided in its letter of support, the petitioner cannot simply refer CIS back to the training program outline it submitted at the time of filing for further details.

For all of these reasons, the AAO finds that the petitioner has failed to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A).

The director also found that the petitioner had failed to set forth, with specificity, the type of training and supervision to be given, and the structure of the training program. The AAO agrees. 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 AAO incorporates here its previous discussion of the petitioner's failure to establish that it has an established training program that does not deal in generalities with no fixed schedule, objectives, or means of evaluation. For similar reasons, the AAO finds that the petitioner has failed to adequately set forth, with specificity, the type of training and supervision to be given, and the structure of the training program. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*).

The director also found that the petitioner had failed to set forth the proportion of time to be devoted to productive employment; that the petitioner had failed to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; and that the petitioner had failed to indicate the source of remuneration received by the trainee and any benefit which will accrue to the

petitioner for providing the training, as required by 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(*2*), (*3*), and (*6*). The AAO agrees. Counsel provided this information in his November 16, 2007 response to the director's request for additional evidence. Given the vast differences between the proposed training program between the one initially proposed and the one described on appeal, the AAO is unable to determine which training program would in fact be the one utilized by the petitioner. As such, the AAO cannot enter a finding that the petitioner has set forth the proportion of time to be devoted to productive employment, shown the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, or indicated the source of remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. As such, the AAO agrees with the findings of the director.

Finally, the director 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 agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*2*) requires a demonstration that 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.

The petitioner stated specifically on appeal that the beneficiary is currently working as a junior technician. The petitioner has not established that it does not employ other individuals as junior technicians. Nor has the petitioner established that the training being offered to the beneficiary (the training described by the petitioner on appeal) is not the same training it provides to its other junior technicians. Nor has any explanation been offered as to the legal basis of the beneficiary's current employment.[4]

That the petitioner is currently employing the beneficiary as a junior technician indicates that it intends to place the beneficiary in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*2*).

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 two additional reasons.

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.

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 electronics repair industry" deficient. Counsel has

[4] The record does not indicate the legal capacity in which the beneficiary was working for the petitioner on January 31, 2008, as the record does not reflect that she held any type of nonimmigrant or other work visa which would enable her to legally work for the petitioner. However, the AAO will not address this matter, as issues surrounding the beneficiary's lawful maintenance of immigrant status are beyond the scope of its jurisdiction.

submitted no evidence to establish that the United States electronics repair industry is different from that 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, counsel states that computer and IT knowledge is "a luxury" in the Philippines and that, for most Filipinos, "computer and Internet surfing are unthinkable frivolities,"[5] and submits evidence regarding its educational system.[6] The issue to be addressed is not whether the Filipino economy is less advanced than that of the United States. 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, upon which the lack thereof counsel rests his argument. The AAO also takes note here that many United States firms have outsourced information technology functions to the Philippines.[7] 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. 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 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*). 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.

According to the Form I-129, the petitioner has 20 employees. On appeal, the petitioner states that the beneficiary is being trained by [redacted], one of its managers, and is assisting in its ordering and shipping department.[8]

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[5] As of April 2007, the Philippines had 14,000,000 internet users. *See* http://www.internetworldstats.com/asia.htm (accessed June 23, 2008).

[6] 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 (accessed June 23, 2008); *see also* http://www.engg.upd.edu.ph/cs/graduate_program.html (accessed June 23, 2008); *see also* http://www.ics.uplb.edu.ph (accessed June 10, 2008).

[7] *See, e.g.,* http://www.businessweek.com/print/globalbiz/content/sep2006/gb20060919_639997.htm (accessed June 23, 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=view ArticleTOC& specialReport+ID=360&articleID=84815 (accessed June 23, 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."

[8] The petitioner states that the beneficiary is assisting in its ordering and shipping department. This conflicts directly with the petitioner's statement in its letter of support that "the trainee will not engage in any productive employment." It is incumbent upon the petitioner to resolve any inconsistencies in the

However, the petitioner has failed to explain how, if the beneficiary will be principally trained by Mr. [redacted] for a period of 22 months, [redacted]'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*, 19 I&N Dec. 582, 591 (BIA 1988). 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.

Finally, the AAO turns to the petitioner's assertions regarding counsel's handling of the instant petition.[9] Regarding counsel's conduct, the petitioner states the following:

> Please allow me to explain that the initial application was filed by an agency that was recommended to me. After receiving your denial, (a decision I did not expect to receive) I read your comments, and must admit, the agency did not adequately explain what the trainee job was all about, and what our company has in store for the future.

However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has included none of these items. The AAO, therefore, will not address the petitioner's allegations.

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.

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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.*

[9] Although the petitioner criticizes counsel's handling of the case, it does not inform CIS that it is no longer represented by counsel. Nor has counsel informed CIS that he no longer represents the petitioner. Accordingly, the Form G-28 remains valid, and counsel will be notified of this proceeding.

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