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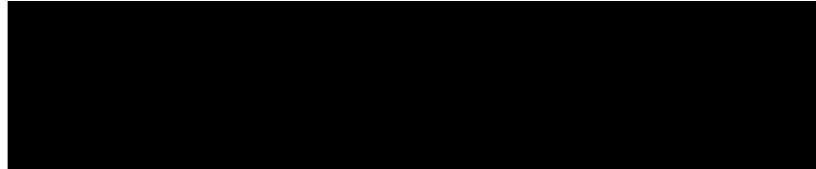
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**U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529**



**U.S. Citizenship  
and Immigration  
Services**

D5



FILE: EAC 07 021 53665 Office: VERMONT SERVICE CENTER Date: SEP 17 2007

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a golf and country club that seeks to employ the beneficiary as a food and beverage trainee for a period of twelve 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 (RFE); (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 establish that the beneficiary would not be engaged in productive employment, unless such employment is incidental and necessary to the training; (2) that the petitioner had failed to establish that the beneficiary would not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed; (3) that the petitioner had failed to describe the career abroad for which the training would prepare the beneficiary; (4) that the petitioner had failed to establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (5) that the petitioner had failed to establish that the proposed training is unavailable in Taiwan, the beneficiary's home country; and (6) that the petitioner had failed to establish that the petitioner had failed to adequately describe the benefit which will accrue to the petitioner for providing the proposed 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.

The petitioner's October 26, 2006 letter of support describes the goals of its proposed training program as follows:

The overall goal of the Food and Beverage training program is to initially provide individuals with American standards of service to enhance their own knowledge and experience for employment abroad. A main objective is a full understanding of the day-to-day operations of the various departments within a hospitality setting, and to comprehend the way the departments and divisions are managed. Additionally, the trainee should obtain an overall view of club organization and have an insight in how departments relate to each other, while also learning new skills and technologies, thereby exposing themselves to contrasting standards of service and management styles as compared to those in their home country. By being exposed to the management techniques and policies utilized in the United States, individuals will be able to draw comparisons of the advantages and disadvantages relative to the methods they are already familiar with. Through the series of training courses, they should develop and demonstrate theoretical knowledge necessary in customer service and business management as it relates to the hospitality industry. Following this, the trainees will be rewarded for exhibiting mastery and understanding of the aforementioned theoretical knowledge gained through course work, on-site guidance and training from direct supervisors through increased responsibilities and positive supervisor evaluations. Finally, through daily interactions at the training site and in the local economy, individuals will gain a better understanding of American culture and society as a whole.

The petitioner stated that the beneficiary would spend twenty hours per week in a classroom and would receive on-the-job training for thirty hours per week. The petitioner stated that the proposed training program would consist of three rotations: (1) the petitioner's restaurant (for seven months); (2) the petitioner's banquet (for three months); and (3) the petitioner's administrative and reception operations (for two months).

The petitioner indicated that during the restaurant portion of the training, which would last seven months, the beneficiary would be placed with both the day and evening shifts of the petitioner's club restaurant. She would gain experience with different culinary styles, menu selections, service methods, marketing techniques, and guest expectations. According to the petitioner, during this rotation the beneficiary would acquire the following skills: understanding proper table service; application of financial and operational techniques in the restaurant environment so as to maximize revenues and profits; how to complete the items on the restaurant's "set-up list"; understanding, and adhering to, management policies and procedures; comprehending wine selection and service; communicating in a fast-paced, highly stressful environment; recognizing and observing the objectives, policies, standards, and procedures set by the executive chef and restaurant manager; mastering safety procedures and reporting hazards to supervisors; proper use of the petitioner's point of sale system; and learning the petitioner's up-selling techniques.

The petitioner stated that during the banquet portion of the training, which would last three months, the beneficiary would develop an appreciation of the different requirements and expectations for the various types of banquet services offered by the petitioner, such as banquet service in meeting rooms, buffets, receptions, and plated service. The beneficiary would also learn how to serve banquet bar guests, how to serve as a cashier, and how to serve at small, private events. According to the petitioner, during this rotation the beneficiary would learn how to read room diagrams and banquet event orders, and to set the rooms accordingly; room breakdown; when to set up walls between rooms; how to set up rooms for VIP meals and meetings; how to set up buffets and special functions; how to assemble risers and dance floors; and the process for taking care of equipment, maintenance, and repair.

The petitioner stated that during the administrative/reception portion of the training, which would last for two months, the beneficiary would be in constant contact with guests, both directly and via the telephone. The beneficiary would become prepared for a variety of service-related inquiries and expectations, while providing accurate, professional, and courteous service. According to the petitioner, during this rotation the beneficiary would learn to attend to members' and guests' needs; learn how to register members and guests for special events; learn the responsibilities of a cashier, including how to accept payments; learn how to properly greet and welcome guests upon arrival; learn to verify reservations and addresses; learn how to maintain a house bank; learn how to make deposits and accurate reports for daily receipts; learn how to post miscellaneous charges; learn forecasting; develop interdepartmental communication skills when in contact with other departments; learn advanced skills in telephone procedures; learn to track inventory; develop research skills; and conduct computer projects.

In his November 13, 2006 request for additional evidence, the director requested, among other items, further information regarding the petitioner's statement that the beneficiary would spend twenty hours per week in a classroom, stating the following:

You have indicated in a broad sense that the beneficiary will be involved in classroom instruction 20 hours per week and in on-the-job training or incidental employment for 30 hours per week on a rotational basis. It is not evident who is giving the classroom instruction or what is being taught during classroom instruction.<sup>1</sup> It would appear that the training being provided is more attuned to on-the-job training than would be available in classroom instruction. Furthermore, since the beneficiary has already received classroom instruction through her 3-year course in hospitality management it is not evident what would be taught in the classroom that would be beyond what she has already learned in her previous courses. . . .

The training program already provided does not identify what the beneficiary will be doing on a daily basis within the training. Please submit additional evidence to establish that you have an actual, well-structured training program. You must submit a complete outline of the proposed training program. . . .

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<sup>1</sup> The only specific information regarding classroom provided by the petitioner in its initial submission pertained to the banquet portion of the training program. During this period, the beneficiary would be required to attend classes, and pass a test over the materials covered, required by the State of New York, for alcoholic beverage service training. Without taking this class, the beneficiary would be unable to serve alcohol to the petitioner's guests.

Counsel's February 7, 2007 response to the director's request altered the proposed training program. First, the AAO notes that, in its October 26, 2006 letter of support, the petitioner referred to its proposed training program as a "Food and Beverage training program" and referred to the beneficiary in the Form I-129 as a "Foo[d] & Beverage Trainee." However, in response to the director's RFE it relabeled the program as a "community management in-house training program," and emphasized management-related aspects of the training program.

The AAO also notes that, in the initial submission, the proposed training program was to last twelve months. However, the petitioner stated in its response to the director's RFE that the program would cover a maximum of eighteen to twenty-four months.

In addition to these changes, the petitioner also made substantial changes to the structure of the training program itself. As noted previously, the training program was initially to last for twelve months, and be split into three rotations: (1) restaurant (seven months); (2) banquet (three months); and (3) administrative/reception (two months).

However, the new version of the training program was split into two components, with several "divisions." The first component would consist of formal classroom instruction, and the second component would be rotational assignments (split into seven "divisions"). In regard to the classroom instruction, the petitioner stated that distinguished professionals, such as attorneys, urban planners, legislators, realtors, lobbyists, human resources experts, accountants, public relations experts, and senior community services staff members, would provide the beneficiary "with an in depth and concentrated overview of Governance and Operation." Although the petitioner stated that it had an established curriculum of study, it did not provide that curriculum, but rather stated that "a list of titles can be furnished upon demand." The petitioner stated that the beneficiary would complete written assignments, class work, and oral and written testing activities. The petitioner stated that classroom instruction would be "broken up into segments and interspersed with rotational assignments."

As noted previously, the second component of the new version of the training program would consist of seven "divisions." The first division, entitled "property management," would last approximately twelve weeks. According to the petitioner, during this division emphasis would be placed on rule formation and enforcement and property management.

The second division, entitled "by-laws," would last approximately seven weeks. According to the petitioner, the beneficiary would "be provided orientation and background on procedures and methodologies used to draft, reform, and apply Community by-laws." Basic drafting procedures and enforcement mechanisms would be reviewed.

The third division, entitled "strategic planning," would last approximately fifteen weeks. According to the petitioner, the goal of this division of the program would be to provide the beneficiary with an overview of, and basic comprehension of, the procedures that are followed to identify, formulate, and implement the petitioner's goals for the future.

The fourth division, entitled "club financial systems," would last approximately seven weeks. According to the petitioner, the goal of this portion of the training is to provide the beneficiary with an overview of the financial aspect of the petitioner's operation.

The fifth division, entitled "external community affairs," would last approximately five weeks. According to the petitioner, during this division "[e]mphasis will be placed on the importance of liaison work between Community Officials and Municipal, County, State[,] and Federal Lawmakers and Executives."

The sixth division, entitled "[the petitioner's] realty," would last approximately five weeks. According to the petitioner, in this division the beneficiary would learn about the procedures and techniques utilized by the petitioner in reselling its properties, as well as the establishment of procedures with regard to new property possibilities and marketing modalities.

The seventh division, entitled "human resources," would last approximately ten weeks. According to the petitioner, while participating in this division the beneficiary would learn the procedures and techniques used in the recruitment, hiring, training, remuneration, promotion, supervision, transfer, and monitoring of the petitioner's employees.

The petitioner did not address its previous iteration of the training program (i.e., the version broken into restaurant, banquet, and administrative/reception rotations) or explain how that schedule fit into its new schedule.

In his February 7, 2007 response to the director's RFE, counsel stated the following with regard to the breakdown of the program into classroom instruction (20 hours per week) and on-the-job training (30 hours per week):

The division of classroom and on-the-job training hours which comprise the Food and Beverage training program reflect[s] the fact that most, if not all, of the trainees have completed sufficient coursework in hospitality principles and theories prior to participating in this program. It is the hands-on and real-life aspect which most trainees are lacking, and is what [the petitioner] looks to provide through this specialized training program. However, what must be mentioned is that this on-the-job training will not be of a productive nature. The trainees will shadow senior committee and division officers, and will participate solely in an ancillary manner in actual planning, decision making[,] and problem solving. Therefore, the high level of the employees/officers the trainees will be working with, and the highly specialized nature of the work they will be observing, will not permit them to have any meaningful impact on a practical or productive level.

Counsel stated the following with regard to the director's concerns regarding the general nature of the job training functions, and his statement that the duties appeared to be those of waiters and waitresses:

In further addressing USCIS's concern on the general nature of the job duties please see *Exhibit H: Job Description of Dining Room Manager/Food & Beverage Director* [italics in original]. As can be seen from this general list, which resembles most if not all positions of this type, it is important for the Beneficiary to have a solid foundation in all aspects of [the petitioner's] food and beverage services in order to be fully prepared to act as a Dining Room Manager/Food & Beverage Director in the hospitality industry. For example, one of the core duties of the job position is to "train head waiters, captains, bartenders, and staff to handle the various types of food service." This would be next to impossible if the Beneficiary had not already been trained in these areas herself. Furthermore, more general responsibilities include being "in charge of all formal dining

areas of the Club and (possibly) also be(ing) in charge of informal areas such as grills. Supervises Club Food and Beverage Employees in accordance with operating policies" [parentheticals in original]. Once again this task would be quite unfeasible if the Beneficiary did not have first-hand training experience in every facet of [the petitioner's] food and beverage offerings.

Upon review, the AAO agrees with the director that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

As a preliminary matter, the AAO finds that the changes made to the proposed training program in response to the RFE did not merely clarify the initial submission or submit additional details to fill in missing information. Rather, they constituted a material alteration to the proposed training program as set forth initially. For example, counsel stated in his response to the director's request for evidence that the beneficiary's on-the-job training "will not be of a productive nature." Rather, counsel stated, the beneficiary would shadow senior committee and division officers and participate "solely in an ancillary manner," and that the "high level of the employees/officers the trainees will be working with" would "not permit [the beneficiary] to have any meaningful impact on a practical or productive level." In contrast, in the initial submission the beneficiary was to spend seven months working in the petitioner's restaurant and three months working in its banquet department, learning such tasks as proper table service, completing items on the restaurant's "set-up list," reporting safety hazards to supervisors, and learning the petitioner's up-selling techniques. In essence, the beneficiary would have been functioning as a member of the petitioner's wait staff during this time, as the duty lists submitted<sup>2</sup> included such tasks as placing three votive candles on each table, making condiment trays, collecting dirty linens from tables, refilling straw containers, cleaning and wiping down the soda machine, washing the coffee machine, preparing baskets of crackers, preparing tea, setting up waiter stations, cleaning the microwave, and wiping tables clean. Such duties constitute productive work.

The petitioner also altered the length of the proposed training program. While the training program was to last twelve months at the time the petition was filed, in its response to the director's request for additional evidence the timeframe was altered. The new version of the proposed training program was to last eighteen to twenty-four months.

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

Moreover, the AAO also notes inconsistencies in the record. For example, counsel's statement that

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<sup>2</sup> The petitioner specifically referred CIS to these duty lists, stating the following: "For further details on the duties and responsibilities involved in organizing certain meals in specific rooms, please refer to the attached documents."

what must be mentioned is that this on-the-job training will not be of a productive nature. The trainees will shadow senior committee and division officers, and will participate solely in an ancillary manner in actual planning, decision making[,] and problem solving. . .<sup>3</sup>

conflicts directly with his statement that

it is important for the Beneficiary to have a solid foundation in all aspects of [the petitioner's] food and beverage services in order to be fully prepared to act as a Dining Room Manager/Food & Beverage Director in the hospitality industry. For example, one of the core duties of the job position is to "train head waiters, captains, bartenders, and staff to handle the various types of food service." This would be next to impossible if the Beneficiary had not already been trained in these areas herself . . . [T]his task would be quite unfeasible if the Beneficiary did not have first-hand training experience in every facet of [the petitioner's] food and beverage offerings.<sup>4</sup>

Counsel cannot claim that the beneficiary's on-the-job training will not be of a productive nature, while simultaneously claiming that the beneficiary must receive certain productive training, such as "first-hand training experience in every facet of [the petitioner's] food and beverage offerings," which is inherently of a productive nature, so that she may "train head waiters, captains, bartenders, and staff" on the training she has received when she returns to Taiwan.

It is also unclear to the AAO why, if the beneficiary will not engage in any productive employment and will simply shadow senior committee and division officers, as stated in the response to the director's request, the beneficiary will be required to pass a New York-mandated test for alcoholic beverage servers, unless the petitioner in fact intends for her to serve alcoholic beverages to guests as part of her duties (as, presumably, she will not be required to have completed a New York course in order to accept employment in this field in Taiwan).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Having noted the petitioner's material alterations to the petition in its response to the director's request for additional evidence, as well as inconsistencies contained in its submission, the AAO next turns to the matters raised by the director in his denial. As noted previously, the AAO agrees with the director that the petitioner's proposed training program does not meet the regulatory requirements to establish eligibility for the nonimmigrant visa.

The director found that the petitioner had failed to establish that the beneficiary would not be engaged in productive employment beyond that incidental and necessary to the training. The AAO agrees. The

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<sup>3</sup> See counsel's February 7, 2007 response to the director's request for additional evidence, at page 6.

<sup>4</sup> *Id.* at pages 5-6.

regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(3) requires a demonstration that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(E) precludes approval of a training program which will result in productive employment beyond that which is incidental and necessary to the training.

The record clearly establishes that the beneficiary would engage in a great deal of productive employment. As noted previously, the petitioner stated in its initial letter of support that the beneficiary would spend seven months working in the petitioner's restaurant and three months working in its banquet department, for thirty hours per week, learning such tasks as proper table service, completing items on the restaurant's "set-up list," reporting safety hazards to supervisors, and learning the petitioner's up-selling techniques. In essence, the beneficiary would be functioning as a member of the petitioner's wait staff during this time, as the duty lists submitted included such tasks as placing three votive candles on each table, making condiment trays, collecting dirty linens from tables, refilling straw containers, cleaning and wiping down the soda machine, washing the coffee machine, preparing baskets of crackers, preparing tea, setting up waiter stations, cleaning the microwave, and wiping tables clean. Such duties constitute productive work.

The petitioner offers no additional evidence on appeal to rebut the director's finding. In his appellate brief, counsel states simply that "[t]he training and procedures manual was provided to CIS" and that "[a] careful re-reading of the application documentations [sic] and RFE response will show that these questions have already been properly responded to." However, the training materials submitted by the petitioner establish that the beneficiary would spend thirty hours per week engaging in productive employment. The record does not establish that spending such a large percentage (approximately sixty percent) of the beneficiaries' time in productive employment is incidental to the training.

As noted above, the petitioner attempted to amend its proposed training program in its response to the director's request. The AAO will not consider those amendments, as they are attempts to materially alter a deficient petition rather than an effort at clarification.

Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(3), and approval of the petition is precluded by 8 C.F.R. § 214.2(h)(7)(iii)(E).

The director also found that the petitioner had failed to demonstrate that the beneficiary would not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(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 documentation contained in the initial submission clearly establishes that the beneficiary would be working in a position which is in the normal operation of its business and in which citizens and resident workers are regularly employed. Again, the documentation establishes that the beneficiary would spend thirty hours per week as a member of the petitioner's wait staff. Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(ii)(2).

The director also found that the petitioner had failed to adequately describe the career abroad for which the training would prepare the beneficiary. The AAO agrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the petitioner to submit a statement which describes the career abroad for which the training will prepare the alien.

In his denial, the director stated the following:

In response to the request of where the prior trainees are currently working you have indicated that 4 of the beneficiaries are currently working for Fisher Island Club and/or Frenchman's Creek in the United States while 2 beneficiaries are still working with your office in the United States. One individual is working with T-[M]obile overseas while another is interviewing at a hotel and a third is working in a hotel overseas. Another beneficiary is now working at her parents' bed and breakfast while the last 2 are currently working in the United States. It would appear that of those who have obtained employment only a few have obtained employment in the food and beverage industry. It is not evident how the training program has prepared the individuals for careers overseas such that they are seeking employment in golf and country clubs to be employed in a food and beverage department.

On appeal, counsel offers the following rebuttal:

Our trainees and Former Trainees are free to decide what type of business environment they wish to work in after being trained. Whether the additional training program is too broad or not is not a clear-cut decision. Clearly, such a judgment should be made by upper level management at the restaurant, people who have successfully been in the restaurant business for many years.

The AAO finds counsel's rebuttal deficient. While the AAO agrees that individuals are free to choose their desired field of employment, the regulation at issue in this particular case, which the petitioner must satisfy in order to gain approval, requires the petitioner to adequately describe the career abroad for which the proposed training will prepare the alien. A general statement that the beneficiary is free to choose the type of business environment in which she wishes to work in after completing the proposed training program is insufficient. Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(4).

The director also found that the petitioner had failed to establish that its proposed training program 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 training program, as described in the petitioner's initial letter of support, was general and non-specific, and left CIS with little idea of what the beneficiary would actually be doing on a day-to-day basis. Nor did it contain a fixed classroom schedule.

The only information offered by counsel on appeal is the statement that "[a] careful re-reading of the application documentations [sic] and RFE response will show that these questions have already been properly responded to." Pursuant to the previous discussion, the AAO disagrees. Moreover, the AAO notes that counsel and the petitioner were placed on notice, via the director's denial, that CIS found the petition lacking such detail, and elected not to submit additional details on appeal.

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

The director also found that the petitioner had failed to establish that the proposed training is unavailable in Taiwan, 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.

As evidence that this type of training is unavailable in Taiwan, the petitioner submitted a research paper written by a graduate student at the University of Wisconsin-Stout in 1999 and a 2002 article from the *Journal of Human Resources in Hospitality & Tourism*. The director discounted these submissions, stating the following:

It does not state that there is no opportunity to obtain education/experience overseas, but that the education/experience does not compare to what is offered in the United States. Although the evidence does indicate a lowered ability to train individuals in the hospitality industry overseas, it does not establish that the training program offered in the United States meets every other criterion identified in [the] H-3 regulations.

On appeal, counsel and the petitioner have elected not to respond to this portion of the director's denial. The petitioner has failed to overcome this ground of the director's denial, and has failed to satisfy the criteria at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5).

Finally, the director found that the petitioner had failed to adequately describe the benefit which will accrue to the petitioner for providing the proposed training. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6) requires the petitioner to submit a statement describing the benefit which will accrue to the petitioner for providing the proposed training.

The petitioner described the benefits it receives for operating the training program in its letter of support. The petitioner stated that increasing the international representation of its staff increases its ability to accommodate members from a variety of global communities. The AAO finds this explanation reasonable, and therefore withdraws this portion of the director's decision.

For all of these reasons, 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.

The AAO notes that this petition is for an extension of a previously approved petition which, due to a lengthy adjudication, was approved for a short period of time only. In his response to the director's request for additional evidence, counsel stated that the director's request for additional evidence was beyond the authority of CIS, that the petitioner has relied, to its detriment, on CIS to act and deal in a fair and reasonable manner, that CIS has capriciously changed its mind about its previous decision, and that, for equity and common decency, CIS should be estopped from denying the petition.

The AAO notes first that the fact that CIS has previously approved a nonimmigrant petition does not bar it from requesting additional evidence in an extension petition. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, its approval was erroneous. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because

of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The training program described in the initial filing and the training program described in response to the request for additional evidence are two separate programs. Although the record from the petitioner's approved petition for this beneficiary is not before the AAO, it is clear that both training programs contained in the instant record of proceeding cannot both be identical to the previous petition. If the initial training described in the current record is the same as that in the previously approved petition, the approval would have been erroneous.

The AAO is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

The AAO finds that the petition was properly denied and, for the reasons set forth in the preceding discussion, will not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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