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

U.S. Citizenship and Immigration Services

D5

[redacted]

FILE: EAC 07 222 51962 Office: VERMONT SERVICE CENTER Date: APR 0 1 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, Vermont 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 is a design and production studio that seeks to employ the beneficiary as a trainee for a period of eighteen months. The petitioner, therefore, endeavors to classify the beneficiary as a 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 director denied the petition on three independent and alternative grounds: (1) 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; (2) that the petitioner had failed to establish that the proposed training will benefit the beneficiary in pursuing a career outside the United States; and (3) that the petitioner had failed to establish that the proposed training is unavailable in the beneficiary's home country.

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 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.[1] The AAO reviewed the record in its entirety before issuing its decision.

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 first issue to be addressed is whether 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, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*). The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes the approval of any H-3 training program that deals in generalities with no fixed schedule, objectives or means of evaluation. The petitioner must set forth the proportion of time the beneficiary will devote to productive employment, and articulate the number of hours the beneficiary will spend, respectively, in classroom and on-the-job training. 8 C.F.R. §§ 214.2(h)(7)(B)(*2*) and (*3*).

The petitioner filed the nonimmigrant petition on July 27, 2007. In an attachment to Form I-129, the petitioner stated that it has an "actual training program, which is structured, articulable [*sic*], and sequential." The petitioner further indicated that it has an "organized curriculum and is supported by formal materials and a method of evaluation of the trainee."

The petitioner further described the training program as follows:

> The training program submitted with this Petition is a highly structured program. A major aspect of the program involves the rotation of the beneficiary through virtually all aspects of the Petitioner's operations. The alien trainee will be closely supervised during each her [sic] rotation in each area and that this rotation will prepare her to effectively work on major television, film and commercial animation projects that our production company will be producing. . . .
>
> The training . . . will provide this individual with focused training in the United States in the proprietary aspects of the petitioner's organization and operations. . . . During the period of the proposed training the alien trainee will receive formalized instruction for 40% of the time;

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[1] Former counsel for the petitioner indicated on Form I-290B that he would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal. The appeal was filed on October 12, 2007. On February 7, 2008, the AAO contacted counsel by facsimile to inquire whether he submitted a brief and/or evidence within 30 days as stated on Form I-290B, and to afford him an opportunity to re-submit any timely filed evidence. Counsel did not respond to this correspondence and no brief or evidence has been incorporated into the record. The record of proceeding will be considered complete.

> approximately 45% of the time will be devoted to training with direct and actual supervision; 15% of the time will be devoted to on-the-job training without supervision. In addition the alien trainee will not be employed in an area of productive employment other than that which is incidental to the training program. . . .
>
> Our company's method of training consists of: daily sessions of oral instruction with explanation and demonstration to the trainee offered by one of our company's senior productions [*sic*] executives or supervisors; constant observation of the trainee in her performance of the assigned training work with corrective instructions when needed; several sessions each training period in which the trainee will learn how to apply the theoretical instruction and training offered in an actual production setting. The trainee will be evaluated after each period.

In the attachment to Form I-129, the petitioner further indicated that the focus of the training program would be "to develop feature film production business and management skills" and specified that instruction would include the following:

> The trainee will be schooled in all aspects of researching and coordinating various projects; identification and evaluation of projects for potential development; Will be schooled on how to research on various subjects to ensure authenticity of the production to be filmed so the production has a sense of realism; Will be instructed in international film production, financing, marketing and how to act as liaison between distribution and production companies for the development production activities; evaluation of material for production; and being able to develop operational policies and criteria for our company in accordance with collective bargaining agreements in the entertainment industry. She will be trained in how to confer with producers, performers on script submissions, etc.

The same document contained a reference to "[t]he training program offered by di Bonaventura Pictures."

In a letter dated July 13, 2007, the petitioner referred to "DNA Productions' animation program." It is noted that the petitioner in this matter is not DNA Productions and the record contains no other reference to DNA Productions. The petitioner stated that trainees and interns in the program "work on projects currently in production in the graphics and animation production departments," completing basic orientation and software training. The petitioner indicated that trainees acquire "experience on development of projects, story boards, and actual shots on projects in production."

In support of the petition, the petitioner submitted an eight-page overview of its "Animation Training Program." The petitioner indicated that the purpose of the program is to equip the trainee with the expertise needed to fulfill an animation position in a program involving "intensive academic type instruction," and "exposure to various departments for practical training." The petitioner indicated that the focus would be on development of traditional, Avid and CGI skills in animation. According to the training program overview, the beneficiary would spend up to eight months learning "fundamental animation techniques" during the first

phase of the program, and up to seven months of training in "production & camera work" during the second phase of the program.

The training program overview indicates that the beneficiary would be supervised by department supervisors and their subordinates during periods allocated to practical training, while classroom instruction would be provided by "traditional Animators, CGI Animators, Production Supervisors and Lead Key Personnel." Finally, the program indicated that the trainee would undergo "direct instruction and practical training" for forty hours per week.

In addition to the animation training program overview, the petitioner submitted a two-page "training plan" which included a "Syllabus of Training and Objectives." The plan indicates that trainees undergo a one-week orientation period provided by the "affiliate office or training site," and a three-month cultural/educational program designed to introduce them to American social, cultural, political and economic systems. The plan indicates that the trainee will begin the training program after orientation where "he will spend an average of forty hours per week doing practical training through projects and tasks." The training plan outlines a four phase program, with a description of objectives and activities for each phase. While the training plan described is in the animation production field and the description of the objectives and activities is quite detailed, the AAO notes that the topics bear little resemblance to those outlined in the two-phase "animation training program."

The director issued a request for additional evidence (RFE) on August 7, 2007. The director requested, *inter alia*, the following: (1) a statement that establishes the petitioner has a training program and has recruited or hired trainees; (2) additional evidence showing the company's purpose and/or need in providing the training; (3) additional evidence explaining how much time will be devoted to productive employment; (4) additional evidence explaining how much time will be spent in classroom instruction and how much time will be spent in on-the-job training; (4) a copy of the training instructor's manual, a copy of the training syllabus, and evidence of the methods used to evaluate trainee's progress; and (5) documentation to show that previous trainees have competed the training course.

In response, the petitioner submitted a letter dated September 6, 2007, indicating that the purpose of its animation training program is to provide instruction in animation and graphic production techniques, problem solving methods and production pipelines. The petitioner stated that its trainees are qualified to serve as designers or animators for web and television, production assistants, and technical assistants. The petitioner stated that it has trained 11 interns and trainees in the previous three years and identified these individuals by name. The petitioner indicated that each trainee and intern completed a detailed training program similar to the one described in the petition.

The director denied the petition on September 13, 2007, finding 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, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*). The director acknowledged the petitioner's statement that its training program has "an organized curriculum and is supported by formal materials and a method of evaluation of the trainee," but emphasized that the two-page syllabus submitted in support of this statement is insufficient to describe a course intended to last for 18 months. The director observed that, although

requested, the petitioner failed to provide a copy of an instructor's manual, syllabus or any methods of evaluation. The director further noted that the petitioner failed to submit evidence in support of its claim that other trainees have actually completed the course. Finally, the director noted that a training program that does not require a full-time trainer does not rise to the level of an H-3 training program. Based on these factors, the director determined that the petitioner failed to demonstrate that its training program is of the caliber required for H-3 approval.

On appeal, former counsel asserts that the petitioner "provided in detail a specific training manual outlining that the Beneficiary will not engage in productive employment, described the nature and type of training, the supervision to be given, and the structure of the training program. . . ." Counsel contends that there is no requirement that the petitioner employs a full-time trainer and asserts that the petitioner only needs to establish the credibility of the proposed program as a bona fide training situation.

Upon review, the AAO concurs with the directors' decision. Despite counsel's assertions to the contrary, the information contained in the record of proceeding is vague in nature, and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis.

Furthermore, the petitioner has actually submitted three disparate descriptions of its allegedly well-established training program. In the attachment to the Form I-129, the petitioner indicated that the beneficiary is being trained in proprietary aspects of the petitioner's organization and operations and developing "feature film production business and management skills." The petitioner indicated that the skills to be taught would include research of "projects," financing, marketing, liaison between distribution and production companies, evaluation of material for development and production, developing operational policies, and conferring with producers and performers. The petitioner indicated that instruction would be provided by senior production executives and supervisors. As noted above, the description of the training program, as provided on the attachment to Form I-129, referred to "the training program offered by di Bonaventura Pictures," an apparently unrelated company. The petitioner's own letter dated July 13, 2007 referred to "DNA Productions' animation training program." No explanation was provided for the references to third-party companies.[2]

Whereas the training program described in the attachment to Form I-129 stressed the development of business and management skills in a production environment, the petitioner's description of its "animation training program," described a course designed to train the beneficiary in "fundamental animation techniques," and "production and camerawork," focused on "development of traditional, Avid and CGI skills in animation." The training program referred to "intensive academic instruction" to be provided by "Animators, Production Supervisors and Lead Key Personnel," with the goal to develop "skills required for designing, developing and creating animation products for use in the entertainment (television, commercial and film) arena. Topics included in the program were the history of animation, life drawing, cleanup animation, inking, background and layout design, character voicing, action analysis and "modern technological developments." Clearly, this program description bears little resemblance to the business and management-oriented program described in the attachment to Form I-129.

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[2] The three companies are linked by [redacted] whose office is located in Sherman Oaks, California. [redacted] served as counsel in this matter at the time the petition was filed.

Finally, the petitioner submitted the two-page "training plan," which was once again different from the other two descriptions of the petitioner's program. The "Training plan" described four phases rather than two phases including a cultural component no mentioned elsewhere, and was significantly more technical in nature compared to the other two program descriptions. According to the training plan, the objective of the program is to "provide professional skills that can be utilized in the highly specialized and dynamic area of technical animation shader writing." While this training plan is quite detailed, the AAO is not convinced that this description provides an accurate description of the petitioner's established training program. For example, it indicates that trainees work under the supervision of a "shading department supervisor," a position that the petitioner does not claim to have within its company.

Overall, the three descriptions of the petitioner's training program are sufficiently dissimilar to raise serious questions as to which, if any, actually presents an accurate portrayal of the purpose and structure of the program, the type of supervision to be provided, and the amount of classroom versus on-the-job training to be provided. The petitioner's evidence also contains references to the training programs of "DNA Productions" and "Di Bonaventura Films," which are apparently unrelated companies.

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.

The petitioner claims to have a structured program with an organized curriculum, formal materials, and a documented method of evaluation. It also claims to have already put 11 trainees through the same or similar program. Yet, when asked to provide documentation such as training materials, a detailed syllabus, and evidence that others have completed the program, the petitioner failed to submit any evidence in support of its claims. Given that the petitioner has failed to provide a consistent account of its program's methods, goals and objectives, the failure to provide evidence of the very existence of its program is particularly damaging to its claims. 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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Various goals and objectives have been presented, but lists of goals and objectives are not substitutes for descriptions of how those goals and objectives are to be accomplished; the petitioner has not provided a consistent explanation of what the beneficiary will actually be doing during this 18-month period of time.

The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute, or even every single day, of the training program. However, the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a petition that deals in generalities with no fixed schedule, objectives, or means of evaluation. As discussed above, the petitioner has failed to provide a meaningful, consistent description, beyond generalities, of what the beneficiary would actually be doing on a daily basis

while participating in the proposed training program. It has failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*). The petitioner has not established that it has a bona fide training program for H-3 purposes. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the proposed training will benefit the beneficiary in pursuing a career outside the United States. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*4*) requires the petitioner to demonstrate that the proposed training will benefit the beneficiary in pursuing a career outside the United States, and the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(*4*) requires the petitioner to describe the career abroad for which the training will prepare the alien.

In an attachment to Form I-129, the petitioner indicated that the beneficiary would receive "focused training in the United States in the proprietary aspects of the petitioner's organization and operations." The petitioner stated that it intends to train the beneficiary "from the United States perspective so that she can be entrusted with the company's business matters abroad." The petitioner went on to state that the beneficiary would be trained so that she could assume a senior level production position on projects that the petitioner will produce in Korea and Asia when she returns to her home country of Korea at the end of the program.

As noted above, the petitioner has submitted several different descriptions of its training program, and other evidence in the record makes no reference to the proprietary or company-specific nature of the training to be provided or how the training will be used abroad.

In the RFE, the director instructed the petitioner to submit: an explanation as to its purpose and/or need for providing the training; evidence to establish why the training must be obtained in the United States; a statement establishing the position the beneficiary will be prepared for; and a statement regarding any plans the petitioner has for placement of the beneficiary at the conclusion of the proposed training.

In its response dated September 6, 2007, the petitioner stated that the beneficiary that the following types of positions would be available to a trainee at the completion of the training period: designer or animator for television or web productions, production assistant and technical/IT assistant. The petitioner resubmitted the attachment to Form I-129 indicating that the beneficiary would receive training "in proprietary aspects of the petitioner's organization and operations," so that she can be entrusted with the company's business matters abroad. The petitioner noted that a number of its projects are developed off-shore and "having trained talent in various countries is a valuable resource for a company to have." The petitioner indicated that the beneficiary would have the skills to perform senior level production employment on film productions in Korea.

The director denied the petition, finding that the petitioner had failed to adequately describe the career abroad for which the training would prepare the beneficiary. The director noted that the petitioner did not demonstrate that it has established business operations in Asia, and therefore a training program geared toward the petitioner's specific practices and operational way of doing business has no merit. The director observed that having the intent to commence overseas business operations upon the beneficiary's successful completion of the U.S. training is not a valid basis for seeking to classify the beneficiary as an H-3 trainee.

On appeal, former counsel for the petitioner states the following: "The government's argument is circular in nature. Not every business has business activity abroad. Many company's [sic] outsource their business." Counsel states that "the program had been instituted because of considerable difficulty when the company sent employees abroad to work and methods used abroad proved to be unsuccessful."

Upon review, the AAO concurs with the director's determination. The petitioner has stated that the purpose of its training program is to train the beneficiary on the petitioner's own business practices. As discussed above, the record remains unclear as to actual purpose and structure of the program, and based on the discrepancies, the AAO cannot determine with any degree of certainty whether the beneficiary would actually receive training in "proprietary aspects of the petitioner's organization and operations," or what these "proprietary aspects" are.

Having made such statement, however, the petitioner is compelled to further demonstrate that there is a setting in which the beneficiary will be able to use her newfound knowledge of the proprietary practices. Since her newfound knowledge would allegedly be specific to the petitioner, an operation run by the petitioner would be the only setting in which she would be able to use the knowledge. The petitioner has failed to establish that there is in fact exists a career abroad in which the beneficiary can utilize the training to be imparted via the proposed training program. As the purpose of the proposed training program is to train the beneficiary on the petitioner's unique business practices, the only setting in which the beneficiary would be able to utilize her newfound knowledge would be for the petitioner.

While the petitioner claims that there will be projects in Asia to which the beneficiary could be assigned, it has not provided any evidence of its overseas business activities. In this particular case, since the proposed training is claimed to be specific to the petitioner, and the setting in which the beneficiary would utilize her skills would be for the petitioner in Korea, the petitioner must document that, at the time the petition was filed, it actually had, at a minimum, plans to commence operations in Korea upon completion of the training. The record, as presently constituted, contains no documentary evidence of the petitioner's expansion plans at the time the petition was filed, beyond training the beneficiary. Nor has the petitioner submitted any documentary evidence, beyond its own assertions, to demonstrate that it has existing business activities overseas. On appeal, counsel simply asserts "not every business has business activity abroad," which implies that the petitioner is a company with no foreign business activities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(2)(A)(*4*).

The third and final basis for denial was the petitioner's failure to establish that the proposed training could not be obtained in Korea, the beneficiary's 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 agrees with the director's determination.

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.

Generally, if the reason for creation of the H-3 training program is to provide training in the petitioner's own business practices in the United States, the petitioner can demonstrate that the proposed training is not available in the alien's home country. In such cases, the petitioner must establish that its business practices are sufficiently unique that such knowledge can only be obtained at their facilities.

Here, however, it is impossible to determine to what extent, if any, the beneficiary would receive training that is specific and unique to the petitioner, as opposed to general training in the animation or production field. Again, this confusion is due to the petitioner's submission of three different descriptions of its training program, all with different stated structures, purposes and activities.

In light of the discrepancies, the director had ample reason to question whether the training provided could be obtained in Korea. In the RFE issued on August 7, 2007, the director requested that the petitioner provide additional evidence to establish that the proposed training is not available in the beneficiary's home country, and additional evidence to explain why the training must be obtained in the United States.

In response to the request for evidence, the petitioner stated the following:

> The Korean animation industry is fledgling and is in its infancy. On the other hand, the United States is the center of the animation industry (production and post production) and the techniques and methodologies that we have are second to none. This type of training will jump start [the beneficiary's] career when she returns to So. Korea. The state of the art training that we will provide will enable her to land top level employment on major film, television and commercial projects.

In a separate, unsigned statement, the petitioner indicates that the Korean animation market and industry have developed at "an incredible pace" since 2000. The petitioner's statement appears to have excerpted various articles without providing references, and attempts to distinguish between the Korean cartoon animation industry, which is the third largest in the world, and "other motion picture fields like commercial, television projects and films." The petitioner indicates that U.S., Canadian and European studios have established and maintained production studios in Korea for decades. Overall, the statement is confusing and does not offer the requested information as to whether the training to be provided is available in Korea.

The director denied the petition, concluding that the petitioner failed to demonstrate that the training must be conducted in the Untied States and is not available in the beneficiary's home country.

Counsel does not address this issue on appeal, other than noting that the director incorrectly referred to the beneficiary's home country as Japan, rather than Korea, in the decision. The director's error is noted. Although

the error is regrettable, the decision as a whole indicates that the director thoroughly reviewed the evidence before her and issued a decision based on facts in the record of proceeding.

Based on the limited evidence presented, the petitioner has not established that the type of training to be provided to the trainee would not be available in her home country. 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 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. Whether a training program offered by a United States employer is better than a similar program in a foreign country does not establish eligibility under this regulation.

The petitioner's claim that the United States is "the center of the animation industry" with techniques and methods that are "second to none," is acknowledged, but the petitioner did not identify any specific techniques or methodologies included in its training program that could not be learned in Korea. The petitioner provided no documentation at all regarding the training available in Korea in the animation industry or the typical preparation involved. Again, 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,

The record as presently constituted does not satisfy 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.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) precludes approval of a petition in which the petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. The petitioner has not provided a consistent account as to who on its staff would be providing training to the beneficiary. The petitioner initially indicated on Form I-129 that it has 16 employees. The petitioner indicated in its "animation training program" that it employs over 20 individuals, and that the beneficiary's training would be provided by "traditional animators, CGI Animators, Production Supervisors, and Lead Key Personnel." The petitioner's "training plan" indicates that the beneficiary would have a "training mentor," a supervisor, and perform practical work under the supervision of a "shading department supervisor." In response to the NOID, the petitioner indicated that it has 12 employees and listed them by name and job title, but the job titles provided do not coincide with other information in the record with respect to who would be providing the beneficiary's classroom training and supervision. Again, 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.

Accordingly, the petitioner has not established that it has the manpower to provide the training outlined in the various training plans submitted.

For all of these reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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

ORDER: *The appeal is dismissed.*