U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D5

[redacted]

DATE: OCT 10 2012 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the 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.

On the Form I-129 visa petition, the petitioner describes itself as a pool services and consulting company established in 1997. In order to employ the beneficiary in what it designates as a pool management trainee position, the petitioner seeks to classify him 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 the basis of his determination that the petitioner had failed to establish: (1) that similar training is unavailable in the beneficiary's own country; (2) that the training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; (3) that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; (4) 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; and (5) that the training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds two additional aspects which, although not addressed in the director's decision, nevertheless also preclude approval of the petition, namely: (1) the petitioner's failure to establish that the training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (2) the petitioner's failure to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition.[1] For these additional reasons, the petition must also be denied.

Applicable Law

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

[1] The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified these additional two grounds for denial.

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)(1)(ii)(E) states, in pertinent part, the following:

> An H-3 classification applies to an alien who is coming temporarily to the United States:
>
> *(1)* As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution. . . .

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 Proposed Training Program

In its February 27, 2012 letter of support, the petitioner described itself as a "professional management company that has offered expert turnkey pool and spa management services to community and municipal pools, country clubs, and condominium associations since 1997." The petitioner explained that it offers a variety of services to its clients including pool equipment repair or replacement, pool resurfacing, pool and spa retiling, and pool cover installation. The petitioner also stated that it offers

training opportunities in lifeguarding and in pool management.

The petitioner claimed that its proposed training program highlights the most important topics in pool operations, maintenance, and safety, including circulation, filtration, chemistry, safety, and risk management, and explained that the training program was designed for individuals wishing to become pool or aquatic facility operators and supervisors but who have little or no prior training or exposure to aquatic facility equipment.

The petitioner stated that its training program provides parallel training in procedural and substantive aspects of pool facility operation and maintenance. The petitioner claimed that the beneficiary would be under the direct and immediate supervision of the employee or manager coordinating that particular component of the training program at all times.

In a document entitled "Pool Management Training Program 2011-2013" which it submitted when it filed the petition, the petitioner claimed that its training program would consist of five phases. The first phase, entitled "Principles and Concepts of Pool Management and Essential Calculations," would last for eighteen weeks, and the petitioner stated that the beneficiary would spend this entire time in classroom instruction. The petitioner described the objective of the first phase of the training program as providing the beneficiary "with basic knowledge of the concepts and principles involved in pool management, water chemistry, and calculations," and stated that this phase of the training program would be subdivided into eight subparts as described below:

Subpart	*Duration*	*Title*
1	2 weeks	Pool and Spa Management
2	6 weeks	Essential Calculations
3	1 week	Pool Water Contamination
4	1 week	Disinfection
5	3 weeks	Water Balance
6	2 weeks	Pool and Spa Water Problems
7	2 weeks	Chemical Testing
8	1 week	Phase I Summary

The second phase, entitled "Principles of Water Chemistry and Circulation Systems," would also last for eighteen weeks, and the petitioner stated that each day during this period of time the beneficiary would spend five hours in classroom instruction and three hours receiving on-site training. The petitioner described the objective of the second phase of the training program as providing the beneficiary "with extensive training in chemical dosing and circulation systems," and stated that this phase of the training program would be subdivided into four subparts as described below:

Subpart	*Duration*	*Title*
1	5 weeks	Chemical Feed and Control
2	5 weeks	Chemical Dosing
3	7 weeks	Water Circulation
4	1 week	Phase II Summary

The third phase, entitled "Filtration Systems and Advanced Chemical Testing," would also last for eighteen weeks, and the petitioner stated that each day during this period of time the beneficiary would spend four hours in classroom instruction and four hours receiving on-site training. The petitioner described the objective of the third phase of the training program as providing the beneficiary "with advanced knowledge in filtration systems, differentiating each type and their filtration processes . . . [the beneficiary] will also be exposed to advanced chemical testing procedures." The petitioner stated that this phase of the training program would be subdivided into four subparts as described below:

Subpart	*Duration*	*Title*
1	7 weeks	Pool and Spa Filtration
2	3 weeks	Heating and Air Circulation
3	7 weeks	Chemical Testing
4	1 week	Phase III Summary

The fourth phase, entitled "Pool Management Concepts and Administrative Procedures," would last for fourteen weeks, and the petitioner stated that each day during this period of time the beneficiary would spend four hours in classroom instruction and four hours receiving on-site training. The petitioner described the objective of the fourth phase of the training program as providing the beneficiary "basic instruction and training in pool operations and required administrative tasks." The petitioner stated that this phase of the training program would be subdivided into four subparts as described below:

Subpart	*Duration*	*Title*
1	3 weeks	Keeping Records
2	1 week	Facility Safety
3	8 weeks	Emergency Response Plans
4	2 weeks	Phase IV Summary

The fifth phase, entitled "Spa and Therapy Facility Operations and Troubleshooting," would last for 22 weeks,[2] and the petitioner stated that each day during this period of time the beneficiary would spend four hours in classroom instruction and four hours receiving on-site training. The petitioner described the objective of the fifth phase of the training program as providing the beneficiary "with an overview of spa and therapy facility operations [and to] provide hands-on experience with troubleshooting." The petitioner stated that this phase of the training program would be subdivided into five subparts as described below:

Subpart	*Duration*	*Title*
1	5 weeks	Spa and Therapy Operations
2	4 weeks	Maintenance Systems
3	5 weeks	Troubleshooting

[2] Although the petitioner indicated that this phase would last for 22 weeks, as noted it only described 20 weeks of training.

4	4 weeks	Facility Renovation and Design
5	2 weeks	Phase V Summary

With regard to its motivation for conducting this training program, the petitioner stated the following:

> [T]he principal purpose of the training provided by [the petitioner] is to provide individuals with first-hand knowledge of standard U.S. pool operation best practices and procedures . . . Modern United States-style pools and spas are not common throughout Eastern Europe. However, their availability is rapidly increasing . . . Therefore, the proper training of individuals willing to undertake this complex activity is imperative to keep these pools and spas operating properly. . . .
>
> The company find[s] it industry-beneficial to train career-oriented individuals who will take their [petitioner-provided] training and make [an] impact on the aquatic industry as a whole and, more importantly, possibly save lives abroad. In addition, these former trainees have proven to be a significant source of business generation for [the petitioner] when their ultimate employers need maintenance support and further training for other employees. . . .

Unavailability of Similar Training in the Beneficiary's Own Country

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) forbids approval of a petition in which the petitioner fails to establish that similar training is unavailable in the beneficiary's own country, and 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*) requires the petitioner to submit a statement which 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.

The director raised this issued in his March 8, 2012 RFE, stating that although the petitioner itself may not offer this training in Serbia, the beneficiary's home country, he was not persuaded that similar training cannot be obtained there from someone else.

In his April 11, 2012 letter submitted in response to the RFE, counsel argued that "the training necessary to become a qualified pool and spa operator is not available in Serbia," and submitted the results of a search he conducted on Google.com on April 11, 2012 utilizing the phrase "'pool and spa operator training' serbia." However, the AAO will assign no evidentiary weight to the results of counsel's search. First, the AAO notes that English is not the primary language of Serbia,[3] and consequently the fact that counsel found no information regarding "pool and spa operator training" being conducted in Serbia in the English language is of little import. Second, even using the English language, counsel could have utilized a number of alternative search terms to conduct his search.

[3] According to the Central Intelligence Agency, Serbian is the official language of Serbia, and it is spoken by 88.3% of the population. Other major languages include Hungarian, Bosniak, and Romany. *See* Central Intelligence Agency, Library, Publications, *The World Factbook*, "Serbia," https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html (accessed September 14, 2012).

Counsel also submits a letter on appeal from [redacted] for the Association of Pool and Spa Professionals (APSP). In his May 9, 2012 letter, [redacted] states that there are currently no APSP training or certification opportunities outside the United States. According to counsel, this letter constitutes "a definitive statement from the licensing agency that explicitly establishes that there is no possible way to receive its training or certifications in Serbia." Counsel also submits a letter from [redacted] Foundation (NSPF). In her May 23, 2012 letter, [redacted] stated that certification from NSPF includes both a proctored certification examination and either: a two-day classroom course or a blended training format consisting of both online and classroom training. Counsel also claims that the classroom training is not available in the United States. However, these letters do not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) or 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*).

When it filed the petition, the petitioner did not state that certification from APSP, NSPF, or any other organization was the goal of the training program. The petitioner's objectives in offering the training program were block-quoted above, and the objectives of each phase of the program were also cited above. Certification from APSP and NSPF were not listed among those goals or cited as a necessary prerequisite to achieving them. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Accordingly, that APSP or NSPF certification may be unavailable in Serbia does not establish that that similar training is unavailable in the beneficiary's own country and that it is necessary for the beneficiary to be trained in the United States. Furthermore, the AAO notes that counsel submits no evidence to support his assertion that the classroom training component of the NSPF training is not available outside the United States. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The record also contains a letter from [redacted] dated January 8, 2010. [redacted] states that although his company offers "maintenance and other specialized pool services" to aquatic centers in Serbia, training on such matters is unavailable in Serbia. However, [redacted] letter satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) nor 8 C.F.R. § 214.2(h)(7)(ii)(B)(*5*). First, because this letter was issued more than one year before the petition was filed and is therefore not contemporaneous, it has limited probative value. However, even if that were not the case, the letter would still not demonstrate the unavailability of the training in Serbia. If the training to provide the services offered by [redacted] company is unavailable in Serbia, then it is unclear how his company operates, unless all of its employees were trained abroad, and the record lacks documentary evidence establishing that such is the case. Nor does the record contain other letters from Serbian pool management companies or any other evidence to otherwise establish that the proposed training, as it was described at the time the petition was filed, is not available in Serbia.

The AAO acknowledges the difficulty in proving a negative. However, the regulation requires the petitioner to do just that and, as set forth above, it has failed to do so. The record of proceeding as currently constituted satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) nor 8 C.F.R. §

214.2(h)(7)(ii)(B)(5). Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Substantial Training and Expertise in the Proposed Field of Training

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) forbids approval of an H-3 petition filed on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training. In denying the petition on this ground, the director noted the beneficiary's graduation from the High School of Hospitality Management of Belgrade, the three summers he worked for the petitioner as a lifeguard in exchange visitor status, his studies in sport and physical education at Belgrade University, and his prior grant of H-3 status in order to receive training from the petitioner. The director also noted that the petitioner's website identified the beneficiary as a member of its "Management Team."

The fact that the beneficiary was previously granted H-3 status for training with the petitioner does not, in this case, preclude satisfaction of this criterion. As argued by counsel and established by the evidence of record, the prior petition was only granted after an entire year of the two-year program had passed; the beneficiary has not had the opportunity to complete the training program.

However, even with that being the case, the petitioner has still not established eligibility under this criterion.

The AAO turns next to the petitioner's identification of the beneficiary as a member of its management team. Although counsel does not address this matter on appeal, the AAO notes that, in his April 11, 2012 letter submitted in response to the RFE, counsel argued that because the petitioner's business name includes the word "management," "being listed on a webpage as a member of the 'Management Team' should not be taken to mean that an individual is an actual member of management; it only means that the individual is employed" by the petitioner. Counsel argued further that although the beneficiary was listed as a member of the petitioner's management team, the fact that the website did not include a biographical description next to his name identifying him as a manager, while other managers were so identified, serves as further evidence that the beneficiary was actually not a member of the petitioner's management team.

The AAO does not find this argument persuasive. Regardless of the petitioner's name, the petitioner clearly identified the beneficiary as a member of its management team on its website, and its public designation of the beneficiary as a member of its management team undermines any assertion that the beneficiary lacks substantial training and expertise in the proposed field of training. For this reason alone, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(C). Having made this finding, the AAO turns next to the beneficiary's education and work experience.

As noted, the beneficiary worked for the petitioner for three summers in exchange visitor status as a lifeguard. The petitioner submitted a copy of the O*Net OnLine Summary Report for lifeguards, and it appears as though certain duties identified as normally performed by lifeguards would require training that would seem to overlap with much of the training offered in this program. For example, the Summary Report states that lifeguards maintain the quality of pool water by testing chemical

levels. However, the record of proceeding lacks any information from the petitioner regarding the training undertaken by the beneficiary over the course of the three summers it employed the beneficiary as a lifeguard. Absent such information, the AAO is unable to determine whether that previous training in fact differed substantially from the training proposed here.

For all of these reasons, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(C). Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Productive Employment Beyond That Incidental and Necessary to the Training

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(*4*) requires the petitioner to demonstrate that the beneficiary will not engage in productive employment unless such employment is both incidental[4] and necessary to the training, and 8 C.F.R. § 214.2(h)(7)(iii)(E) contains a similar prohibition on approval.

As discussed above, the petitioner's website identified the beneficiary as a member of its "Management Team," and the director found the petitioner's identification of the beneficiary as someone serving in that capacity evidence that the beneficiary would engage in productive employment beyond that incidental and necessary to the training. As noted above, the AAO is not persuaded by counsel's explanations regarding the petitioner's public designation of the beneficiary as a member of its management. Furthermore, the AAO finds such public designation to strongly suggest that the beneficiary would engage in productive employment beyond that incidental and necessary to the training.

However, even if that were not the case, the AAO would still find that the petitioner had failed to satisfy the criteria described at 8 C.F.R. § 214.2(h)(7)(ii)(*4*) and 8 C.F.R. § 214.2(h)(7)(iii)(E). The training schedule submitted by the petitioner indicates that the beneficiary would receive three hours of "on-site training" every day for 18 weeks, and four hours of such training every day for 54 weeks. Although the petitioner claimed that the beneficiary would not actively participate or contribute to the work of its employees during this time, the AAO is not persuaded that the beneficiary would spend such a large quantity of time in simple "observation of ongoing projects." The AAO is not persuaded that the beneficiary would not contribute *any* labor to any of these projects as claimed by the petitioner,[5] and finds further that this assertion undermines the credibility of the petitioner's testimony. While the AAO does not doubt that the beneficiary could possibly spend some, or even a great deal, of this time in observation as claimed by the petitioner, it does not find credible the petitioner's assertion that none of this time would be spent in productive employment.

With the AAO's rejection of the petitioner's claim that the beneficiary would never actively participate on, or contribute to, the work of the petitioner's teams during the period of time scheduled for on-site

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[4] The term "incidental" is not defined in the regulation. The definition of "incidental" in *Webster's II New College Dictionary* 560 (Second Edition, Houghton Mifflin Company 2001) is: (1) "[o]curring or apt to occur as an unpredictable or minor concomitant"; and (2) "[o]f a minor, casual, or subordinate nature."

[5] The petitioner is essentially claiming that the beneficiary would spend 1,350 hours watching members of its project teams as they work.

training, the record becomes silent as to what the beneficiary would actually be doing during this time. Nonetheless, given the overall totality of the evidence in this petition, the AAO finds it more likely than not that the beneficiary would spend at least some percentage of this time performing productive employment. However, absent further clarification the petitioner has failed to demonstrate that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training and consequently has satisfied neither 8 C.F.R. § 214.2(h)(7)(ii)(*4*) nor 8 C.F.R. § 214.2(h)(7)(iii)(E). Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Placement Into a Position Which is in the Normal Operation of the Business and in Which Citizens and Resident Workers are Regularly Employed

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(*2*) requires the petitioner to demonstrate 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 AAO finds that, given the petitioner's public designation of the beneficiary as a member of its management team on its website, and its failure to clarify what the beneficiary would actually be doing during 1,350 hours allotted for on-site training, it has failed to demonstrate 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, and it has consequently failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(*2*). Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Recruitment and Training of Aliens for the Ultimate Staffing of Domestic Operations

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(F) prohibits approval of a training program which is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. Given both the petitioner's public designation of the beneficiary as a member of its management team on its website and its failure to clarify what the beneficiary would actually be doing during 1,350 hours allotted for on-site training, it has failed to demonstrate that the proposed training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. Approval of this petition is therefore forbidden by 8 C.F.R. § 214.2(h)(7)(iii)(F). Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Generalities with no Fixed Schedule, Objectives, or Means of Evaluation

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) forbids approval of a training program dealing in generalities with no fixed schedules, objectives, or means of evaluation. The AAO finds that the petitioner has described the proposed training program in very general terms. The petitioner's description of its training program is cursory, generalized, and lacking in meaningful, probative detail. It provides no indication of what the beneficiary will actually be doing on a day-to-day basis while he participates in the training program. Broad statements such as "provide the trainee with basic knowledge of the concepts and principles involved in pool management, water chemistry, and calculations" and lists of study topics provide no insight into how the beneficiary will actually be spending his time. The petitioner has failed to explain how either the broad concepts or study topics it

lists will actually be conveyed to the beneficiary. The training program as described by the petitioner deals in generalities, and consequently the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) forbids its approval. Beyond the decision of the director, therefore, the petition may not be approved for this additional reason.

Sufficiently Trained Manpower to Provide the Training Specified in the Petition

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) forbids approval of a petition where the petitioner fails to establish that it has sufficiently trained manpower to provide the training specified in the petition. The petitioner claimed when it filed the petition that the beneficiary would receive training from "[v]arious representatives from different departments in our company," during the classroom instruction component of the training program, and that he would be [a]ssigned one-on-one to company personnel for first-hand observation of actual projects" during its on-site training component. However, the petitioner did not provide the names of any of these individuals, or submit any information or evidence regarding their expertise to provide the training specified. Nor has the petitioner explained how these individuals' normal job responsibilities would be fulfilled while providing the training specified in the petition. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The petitioner has not established that it has sufficiently trained manpower to provide the training specified in the petition and consequently the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) forbids its approval. Beyond the decision of the director, the petition may not be approved for this additional reason.

Prior Approvals Granted to the Petitioner

The record contains copies of prior H-3 approval notices issued to the petitioner. However, 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. If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, they would constitute material and gross error on the part of the director. 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'r 1988). It would be absurd to suggest that USCIS 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). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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 had approved nonimmigrant petitions on behalf of a beneficiary, 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).

Conclusion

On appeal the petitioner has failed to overcome the director's grounds for denying this petition in that it failed to establish: (1) that similar training is unavailable in the beneficiary's own country; (2) that the training is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; (3) that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; (4) 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; and (5) that the training program is not designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States. Beyond the decision of the director, the AAO finds that the petitioner has also failed to establish: (1) that the training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (2) that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified in the petition. Accordingly, the appeal will be dismissed and the petition will be denied.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

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

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