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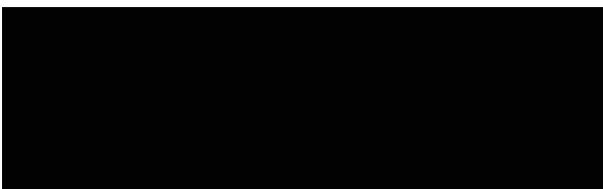
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: WAC 08 056 51496 Office: CALIFORNIA SERVICE CENTER Date: **MAY 08 2009**

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.

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


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as nonimmigrant trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii). The petitioner operates a printing business specializing in digital, large format and offset printing. It seeks to employ the beneficiary as a trainee for a period of two years.

The director initially approved the petition on January 30, 2008, but subsequently issued the NOIR on March 19, 2008. Upon review of the petitioner's rebuttal evidence, the director revoked the approval of the petition on May 9, 2008, citing five separate and independent grounds for revocation. Specifically, the director found that the petitioner: (1) did not establish that the proposed training is not available in the beneficiary's home country; (2) did not set forth, with specificity, the training program being offered, or establish that the program does not deal in generalities with no fixed schedule, objectives or means of evaluation; (3) did not establish that it has sufficiently trained manpower to provide the training specified; (4) did not adequately describe the career abroad for which the training will prepare the beneficiary; and (5) did not establish that the beneficiary would not be engaged in productive employment beyond that which is incidental and necessary to the training.

On appeal, counsel for the petitioner states that the proposed training program satisfies all the requirements for H-3 classification. Counsel submits a brief and evidence in support of the appeal, the majority of which was previously submitted.

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.

Under USCIS regulations, the approval of an H-3 petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(3)(B).

In the present matter, the director provided a detailed statement of the eligibility criteria at 8 C.F.R. § 214.2(h)(7), and the proposed grounds for the revocation, and allowed the petitioner 30 days to submit rebuttal evidence. The director also cited to the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) as the basis for the proposed revocation, stating that approval of the petition constituted "gross error."

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

Id.

Accordingly, upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's Notice of Intent to Revoke; (3) the petitioner's response to the Notice of Intent to Revoke; (4) the director's notice of revocation; and (5) the petitioner's Form I-290B, Notice of Appeal or Motion and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

Upon review, the approval of the petition was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the regulations.

The petitioner filed the nonimmigrant petition on December 18, 2007. In a letter dated December 12, 2007, the petitioner summarized the training program as follows:

The trainee will undergo a comprehensive program encompassing aspects of Digital Large Format and Offset Printing and Business Processes/Operations. The program should transfer the range of professional skills relating to the operation and upkeep of a Digital and Offset print business utilizing the newest technologies and business techniques & tools.

[The beneficiary] will learn and apply the knowledge and skills acquired through this training experience in the areas of Operations, Design, Logistics, marketing, Accounting, Legal Issues to operate a Modern Print Business Internationally.

This program was designed to pass on empirical and theoretical concepts for the purpose of setting up a modern Print business not available in the trainee's home country.

The petitioner indicated that the beneficiary will undergo academic instruction and "practical application" six hours daily, five days per week, and that the training would involve 70 percent academic training, versus 30 percent supervised practical applications. The petitioner also stated that the beneficiary would be required to attend a "Digital Certification program in Digital Arts."

The petitioner submitted a six-page overview of its training program, which includes overviews of 15 courses to be completed, as follows:

- Course 1: Introduction: Publishing in Today's Digital Era
- Course 2: Technical Infrastructure
- Course 3: XML & Related Technologies
- Course 4: Organizing, Editing & Linking Content
- Course 5: Data Capture & Conversion
- Course 6: Composition, Design & Graphics
- Course 7: Accessibility
- Course 8: Digital Printing
- Course 9: Multimedia Publishing
- Course 10: Content Management & Web Publishing
- Course 11: Electronic Books & the Open eBook Publication Structure
- Course 12: Archiving
- Course 13: Legal Framework: Copyright & Trademark
- Course 14: International Issues

Course 15: Digital Rights Management

The petitioner indicated that in addition to this trainings, which would require 1,870 hours of on-the-job training and 750 hours of classroom training, the beneficiary would devote 325 hours to completing a "Digital ARTS Certificate Program." The beneficiary would also receive 350 hours of training in "Accounting Systems and Business modules," and 400 hours of training in "Large Format Printing." The petitioner indicated that the program involves a total of 3,695 hours, including 2,645 hours of "on-the-job" training and 1050 of "course" training. The petitioner also submitted a 24-page "training outline" which breaks down each of the above-referenced "courses" into specific topics.

The first issue to be addressed is whether the petitioner adequately described the type of training and supervision to be given, and the structure of the training program. 8 C.F.R. § 214.2(h)(7)(B)(1). 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.

In the notice of intent to revoke, the director observed that, although the petitioner's proposed training program including general objectives, it does not have a fixed schedule or means of evaluation. The director found that the schedule provided was far too vague, and provided no detail regarding how the training would actually occur, how the beneficiary would spend his days, and how the training would be structured. The director also noted that the petitioner failed to submit evidence of any formal training materials, books or testing instruments or other means of evaluation. Finally, the director noted that although the training program indicates that the beneficiary will be required to complete a "Digital ARTS Certificate Program," "Accounting Systems and Business Modules," and a "Large Format Printing" module, the petitioner did not clarify whether such programs would be conducted on-site or off-site, or who would provide such training.

In response to the notice of intent to revoke, the petitioner first clarified that it made a typographical error in the training program and interchanged the number of hours to be devoted to practical training versus coursework. The petitioner clarified that approximately 70 percent of the time would be devoted to academic training.

The petitioner also addressed the director's request for additional information regarding the Digital ARTS Certificate program as follows:

The Certificates for Digital Arts will be conducted by Gaitlin Education systems, which will entail 225 hours of seminars, "webinars" and course work and 100 hours of practical applications of the course. The 225 hours will be off site as required by Gaitlin Education and 100 on the job training will be at [the petitioner's] "sister company" A.D.I., Arete Digital Imaging, located right next to [the petitioner]. . . .

The petitioner submitted a slightly revised training outline/syllabus which identifies the schedule for each "course," and the instructors for the courses. The petitioner stated that "each training module will have an aptitude test after completion and a prerequisite to advance to the next course."

The petitioner indicated that each of the first six courses would each require one month for completion, courses seven and nine would require 15 days to complete, course eight would require one month, courses 10

and 11 would each require one and one-half months, course 12 will require two weeks, course 13 will require one month, course 14 will require two months, and course 15 will require one and one-half months. The total time for completion of the 15 courses would be from March 1, 2008 through June 15, 2009. The petitioner re-iterated that the beneficiary would be in training for 30 hours per week.

The petitioner indicated that the Digital Arts Certificate program requires 225 hours and would be completed between July 1, 2009 through September 15, 2009. The petitioner provided brief descriptions of nine courses included in the program: Photoshop Basics, Digital Photography 1, Illustrator basics, Color Theory, Design and Composition, Intro to Drawing, Digital Illustration Basics, History of Art and Advanced Photoshop. The petitioner did not submit a course catalog or schedule from Gaitlin Education to corroborate the schedule and content for the course.

The director revoked the approval of the petition on May 9, 2008, finding that the petitioner failed to set forth, with specificity, the training program being offered including the type of training and supervision to be given. The director acknowledged the schedule submitted in response to the notice of intent to revoke, but found that merely designating the length of time to be devoted to a topic was insufficient to establish how the training would actually occur and the structure of the program. The director again noted that the record is devoid of any formal training materials, books, or other testing instruments. The director also observed that the petitioner did not clarify the type of training included in its Digital Arts certificate program, "accounting systems and business modules" and "large format printing" module. The director found that the training program deals in generalities with no fixed schedule, objectives or means of evaluation, and therefore cannot be approved, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(A).

On appeal, the petitioner resubmits the training program and training outline previously submitted. Counsel provides an overview of the program's objectives, but does not discuss the specific deficiencies addressed by the director.

Upon review, the AAO concurs with the director's decision to revoke approval of the petition. The information contained in the record of proceeding remains 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. The petitioner's description of the first 15 months of its 24-month program is limited to what appears to be a table of contents from a textbook.¹ The petitioner has failed to provide any information regarding its training program beyond the list of topics to be covered during the program, without any indication as to what would be involved in the practical training portions of the program, how the material would be covered (lectures, assignments, etc.) or how the topics relate to the petitioner's operations. The record is also devoid of any evidence or explanation regarding the type of on-the-job training to be given. In addition, as noted by the director, the petitioner has not submitted copies of any course materials, lists of textbooks or other materials to be used, testing instruments or other documentation establishing that there is a formal training program in place and a planned means of evaluation. Going on record without supporting documentary evidence is not sufficient for purposes

¹ A simple Internet search reveals that the petitioner derived its "course" descriptions from *The Columbia Guide to Digital Publishing*, (William Kasdorf, ed., Columbia Univ. Press 2003). A description of the book and its contents is available at <http://cup.columbia.edu/book/978-0-231-12498-0/the-columbia-guide-to-digital-publishing/tableofContents> (accessed on March 25, 2009).

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)).

Furthermore, the petitioner's statements regarding the length of time to be devoted to each topic do not comport with other information in the record regarding the amount of time the beneficiary will spend in training. The petitioner has consistently indicated that the beneficiary will undergo training 6 hours per day, Monday through Friday, or approximately 132 hours per month. However, according to the training schedule submitted in response to the notice of intent to revoke, the beneficiary will be expected to undergo between 140 hours and 260 hours of training in any given month, and up to 140 hours of training in some two-week periods. 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).

The AAO notes that the director appears to have overlooked the petitioner's statement that the "Digital Arts Certificate" will be awarded by Gaitlin Educational Services. However, the petitioner has not adequately documented how this training will be completed or corroborated its claim that the certificate program even exists. The petitioner did not provide course requirements, course materials, evidence that the beneficiary is eligible to enroll in the program, evidence as to whether the coursework is completed on-line or at an educational institution, evidence regarding the length of time normally required to complete the program, etc. The petitioner also failed to describe and document the nature of the 100 hours of practical training to be provided by the petitioner's claimed "sister company" in connection with the course certificates. 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. at 165.

Finally, the AAO notes that the petitioner has provided no information at all regarding the content of the last six months of its 24-month training program, which are described in the record simply as "Accounting Systems and Business Modules," and "Large Format Printing." The petitioner has also failed to indicate the instructors or supervisors for these components of the training program.

The petitioner has provided an overall objective for its program, but a broad objective is not a substitute for descriptions of how those objectives are to be accomplished; the petitioner has not explained what the beneficiary will actually be doing for the entirety of the training program. The petitioner is not required to provide an exhaustive account of how the beneficiary is to spend every minute of the training program. However, the petitioner has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing, on a day-to-day basis, for much of the proposed training program, and counsel elects not to provide additional information regarding what the beneficiary will actually be doing on appeal. The petitioner has therefore failed to satisfy the regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A). Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the petitioner established that the proposed training is not available in the beneficiary's home country of the Philippines, as required by 8 C.F.R. 214.2(h)(7)(ii)(A)(1). The regulation at 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.

In its letter dated December 12, 2007, the petitioner stated that it decided to assume the expense of training the beneficiary "for the purpose of a possible joint venture to open a Modern Print business in the trainee's home country." The petitioner provided the following explanation as to why the training is unavailable in the Philippines:

Philippine business practices and models differ from [the petitioner's] operations in that applicable regulations, procedures and transactions differ despite similarities in interpretation of some controlling international authorities. The disadvantage of the Philippines is the lack of Technology to operate a Digital & Large Format Print business due to lack up to date machinery and the knowledge to fully utilize these new technologies. Both the petitioner and beneficiary will benefit from the cross training.

In the Notice of Intent to Revoke issued on March 19, 2008, the director found that the petitioner had failed to submit evidence in support of its statements that the training to be provided is unavailable in the Philippines, and failed to sufficiently explain why such training could not be obtained in the beneficiary's home country.

In response, the petitioner stated that the training is "unique to the petitioner and not available anywhere else." The petitioner also submitted the following documentary evidence in support of its claim that the training is unavailable in the Philippines:

- A document identified as an excerpt from the web site of the Philippines National Printing Office. The short excerpt indicates that "for the year 2002, NPO is vigorously pursuing its modernization program," and notes that "NPO personnel were sent to trainings and workshops on various printing skills" to keep abreast of new technologies.
- A report titled "The Philippines Printing Industry in the Globalization Era," presented by a trustee of the Philippines Printing Technical Foundation at the FAGAT Information Exchange Meeting held in March 2004 in Kuala Lumpur, Malaysia. The petitioner highlighted references to a "lack of formal courses in printing and publishing," and a "limited supply of skilled labor" in the industry.
- An article titled "Old Technology, Lack of Trained Printers Afflict Publishing Industry." The source of the article and its date of publication are unknown, although the article refers to data from 1995. The petitioner highlighted a reference to "the utter lack of school-trained technical workers and printing manager."
- A report titled "Full Digitization in the Philippines" presented at the 1998 FAGAT Information Exchange Meeting. The petitioner did not highlight any portion of this document.

Upon review of the petitioner's response, the director revoked the approval of the petition. The director determined that the petitioner failed to establish that the training to be provided is unavailable in the Philippines. The director acknowledged the evidence submitted in response to the notice of intent to revoke, but observed that none of the submitted articles address the issue of whether training in digital printing is

available in the Philippines. The director further observed that the articles submitted appear to be quite dated, therefore making the information contained in them obsolete.

On appeal, counsel for the petitioner asserts that the petitioner "will furnish comprehensive and cutting-edge knowledge to its participants from the perspectives of a company remaining competitive in the digital printing industry." Counsel notes that, although training programs in the "generalities of digital printing technologies" exist in the Philippines, the training to be provided is only available from the petitioning company. Counsel asserts that the training "is solely focused upon its company's business operations and objectives and other companies are incapable of providing the same company-specific training program."

In support of the appeal, counsel re-submits the above-referenced articles regarding the printing industry in the Philippines. In addition, the petitioner submits a letter dated May 12, 2008 from J. [REDACTED] President of the Printing Industries Association of the Philippines. Mr. [REDACTED] states that his office reviewed the petitioner's training program and "has come to the conclusion that this particular training in its form and entirety is not available in the Philippines."

Upon review, the petitioner has not demonstrated that the training to be provided is not available in the beneficiary's home country of the Philippines.

The AAO will first address the petitioner's claim that the training to be provided is "unique to the petitioner" and "not available anywhere else." The petitioner has not supported its claim that the training is "solely focused upon its company's business operations and objectives." As discussed above, the 15 "courses" outlined by the petitioner appear to be based on chapters in a textbook. Another portion of the training program requires the beneficiary to obtain a certificate from a third-party organization and is therefore not specific to the petitioner. None of the proposed training, as described in the program, relates specifically to the petitioning company and there is no evidence that the petitioner has developed any training materials specific to its company. In addition, the petitioner has not described what makes its "business operations and objectives" so unique, or otherwise attempted to differentiate it from other businesses operating in the same industry. 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. at 165. The claim that the training to be provided is company-specific and therefore can only be obtained with the petitioner is not persuasive.

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 similar training would take longer in the beneficiary's home country, or whether such training would be inferior to that available in the United States. Whether similar training in the beneficiary's home country would take longer to complete or would be inferior is not material; 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. The fact that 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.

On appeal, counsel acknowledges that training programs in digital printing are in fact available in the Philippines, but states that the petitioner's training will be provided from the perspective "of a company remaining competitive in the digital printing industry." This vague statement provides little insight into how the training to be provided by the petitioner is significantly different from training programs in digital printing

available in the Philippines. A review of the articles submitted by the petitioner, even those that are quite dated, shows that there are in fact modern, progressive printing companies operating in the Philippines, and that high-end digital printing equipment is available. A shortage of trained personnel cannot be equated to the unavailability or nonexistence of any training programs in digital printing technologies. While it might be correct to state that there are far fewer cutting-edge printing companies operating in the Philippines compared to the United States, it cannot be concluding that no such companies exist. Furthermore, it is reasonable to assume that such companies are operated by personnel who received their training in the Philippines, either in universities, technical institutions, or on-the-job.

Finally, the AAO acknowledges the statement from [REDACTED] of the Printing Industries Association of the Philippines, who offers his opinion the training offered by the petitioner "in its form and entirety is not available in the Philippines." The brevity of the statement and lack of accompanying explanation undermines the probative value of this opinion. [REDACTED] reference to the "form and entirety" of the training could be interpreted as an indication that he is not aware of a training program that is similarly structured and encompasses the identical content as the petitioner's program. Such statement would not preclude the possibility that the same academic and on-the-job training cannot be obtained in the Philippines. [REDACTED] did not refer to any specific aspect of the petitioner's program that sets it apart from the training available in his country. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO is not persuaded that training in modern printing technologies could not be obtained in the beneficiary's home country of the Philippines. The petitioner has failed to satisfy the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I). Accordingly, the appeal will be dismissed.

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

Prior to the initial approval of the petition, the petitioner did not indicate who would provide instruction and/or supervision to the beneficiary during the 24-month training program. Therefore, in the Notice of Intent to Revoke, the director stated:

[T]he petitioner does not provide the names, educational background and qualifications of those who will be providing the beneficiary's training. Nor does the petitioner explain how they will still be able to provide the training while performing their normal daily duties. The training program does not appear to have been structured in such a manner that there will be minimal disruption in the company's normal business operation.

The director also noted that the petitioner did not provide the names of the academic institution and/or qualified instructors who would provide the digital arts, accounting/business and large format printing modules of the program, which appeared to be separate from the 15 courses outlined in the training syllabus.

In its response to the notice of intent to revoke, the petitioner indicated that responsibility for delivering the 15 course training program outlined in the training syllabus would be divided between its president [REDACTED]

██████████, vice president ██████████ workshop/production manager ██████████, and an employee of the petitioner's pre-press/art department ██████████). The petitioner also provided a list of instructors which identified these four employees and briefly described their qualifications. The list of instructors also identified nine instructors responsible for "digital arts and large format" training. None of these employees appear on the petitioner's organizational chart. The petitioner's course outline identifies one instructor, ██████████, who is not included in the list of instructors or on the petitioner's organizational chart.

The director revoked the approval of the petition, finding that the petitioner failed to submit adequate evidence that it has the trained manpower to provide the training specified. The director acknowledged the list of instructors submitted, but noted that the petitioner "fails to explain how they will still be able to provide the training while performing their normal daily duties." The director also found insufficient evidence pertaining to the instructors for the digital art certification program.

On appeal, counsel for the petitioner asserts that the petitioner has appointed four employees, ██████████ and ██████████ to provide "lectures and on-site training" to the beneficiary according to the schedule in the training program. Neither counsel nor the petitioner further addresses this issue.

Upon review, the AAO concurs with the director. The petitioner has not established that it has sufficiently trained manpower to provide the training specified, as required by 8 C.F.R. § 214.2(h)(7)(iii)(G).

The petitioner indicates that four of its employees will provide as many as 260 hours of training to the beneficiary per month over a period of 15 months. During some months, there is a single employee assigned to training and supervising the beneficiary. It is unclear how any employee could devote more than 40 hours per week to training the beneficiary and still carry out his or her regular job duties. The petitioner has neglected to explain how its employees will carry out the training without disruption to the company's regular business, although the director has twice advised the petitioner of this deficiency. The director's request is reasonable considering the petitioner's claim that 70 percent of the training will be devoted to "lectures" which would necessitate removal of the instructors from their normal routine. 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 at 165.

Furthermore, the AAO notes that the list of trainers provided on appeal differs from the list of instructors indicating in the training schedule submitted in response to the notice of intent to deny. The petitioner appears to have replaced ██████████ with ██████████ without explanation. 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.

As noted above, nine of the thirteen instructors included on the petitioner's list are not identified on the petitioner's organizational chart. The petitioner has not explained for whom they work or what specific courses they will teach. Finally, as discussed above, the petitioner has not outlined the final six months of its 24-month program, or identified the supervisors/instructors for the large press format and accounting/business management modules.

Overall, the evidence is insufficient to establish that the petitioner has sufficiently trained manpower in place to provide the specified training. For this additional reason, the appeal will be dismissed.

The fourth issue addressed by the director is whether the petitioner adequately described the career abroad for which the training will prepare the beneficiary, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(4). The regulations prohibit approval of a training program that is in a field in which it is unlikely that the knowledge or skill will be used outside the United States. 8 C.F.R. § 214.2(h)(7)(iii)(D). The petitioner must submit evidence that the training will benefit the beneficiary in pursuing a career outside the United States. 8 C.F.R. § 214.2(h)(7)(ii)(A)(4).

The director specifically noted that the petitioner failed to establish that it has invested or is actively planning to invest in a printing business in the Philippines. The AAO disagrees with the director's conclusion and will withdraw this ground for revocation of the approval. As discussed above, the AAO finds ample evidence that there are modern printing businesses operating in the Philippines. The training, which appears to be general in nature rather than narrowly tailored to the petitioner's operations, would therefore prepare the beneficiary in pursuing a career in the printing field in his home country, regardless of whether he seeks employment with a future branch of the petitioner or an unrelated company.

The fifth and final issue addressed by the director is whether the petitioner established that the beneficiary would not be engaged in productive employment beyond that which is incidental and necessary to the training, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(3). The director found that the program is primarily composed of on-the-job training and that the beneficiary duties "appear to be those of the regular employees in each department of the petitioning entity." The director noted that there were conflicting statements in the record regarding the amount of time to be devoted to on-the-job versus classroom training.

On appeal, counsel for the petitioner asserts that the training program was established for the sole purpose of training participants to acquire "advanced knowledge and skills of digital printing technologies to become their overseas representatives of the petitioner." Counsel asserts that, while there are some productive activities, the beneficiary will not engage in any productive employment unless such activities are necessary to accomplish the training.

Upon review, the petitioner has failed to establish that the beneficiary would not be engaged in productive employment beyond that which is incidental and necessary to the training required. The AAO does not, however, agree with the director's conclusion that the beneficiary's duties appear to be those of the regular employees. As discussed above, the petitioner has not, in fact, established what the beneficiary will actually be doing during the two-year training program so there appears to be no evidentiary support for the director's conclusion that his duties would be those of the regular employees. Based on the minimal explanation and conflicting information in the record regarding the actual structure, schedule and content of the training program, the AAO cannot conclude whether the beneficiary would or would not be engaged in more than incidental productive employment. It is the petitioner's burden to set forth the training program with specificity.

Absent evidence of what the beneficiary will be doing on a day-to-day basis for the entirety of the 24-month period, the petitioner has not met its burden of establishing what portion of the program will be devoted to productive activities. Without documentary evidence to support the claim, the assertions of counsel will not

satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.