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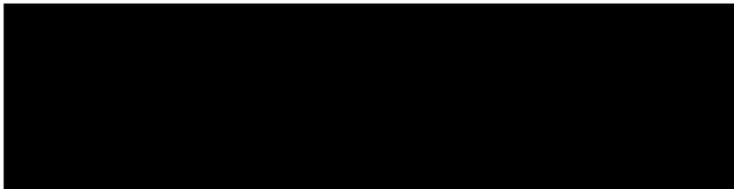
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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

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JAN 27 2010

FILE: EAC 08 167 53169 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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:



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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking 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 petitioner operates a gymnastics training center and seeks to employ the beneficiary as a trainee for a period of two years.

The director denied the petition on July 11, 2008, citing five independent and alternative grounds for denial. Specifically, the director found that the petitioner: (1) did not establish that the proposed training program is not on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training; (2) did not set forth, with specificity, any benefit which will accrue to the petitioner for providing the training; (3) did not establish that the petitioner has the physical plant and sufficient trained manpower to provide the training specified; (4) does not show the number of hours that will be spent, respectively, in classroom and on-the-job training, or otherwise establish that the program does not deal in generalities; and (5) did not establish that 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 petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner states that the proposed training program satisfies all the requirements for H-3 classification. Counsel suggests that, based upon the language used in the notice of denial, the petitioner believes that the director may not have reviewed the submitted training program material. Counsel submits a brief and documentary 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.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of denial; and (5) the petitioner's appeal, counsel's brief and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

In a letter dated May 6, 2008, the petitioner described the components of the program, noting that it includes safety and education, gymnastics coaching, judging, and gym management, as follows:

1. Safety Education – within the first few months of arrival, [the beneficiary] will be required to take a course to become safety certified using an online and hardcopy (text) course requiring a test to become certified. . . . In order for a coach to be qualified to be on the gym floor coaching, he or she must be USA Gymnastics safety certified. Additional safety education will be provided during his coaching training and at regional and national conferences.
2. Coaching – At least five days a week, [the beneficiary] will be training with one of our head coaches in learning to coach competitive teams, but we also anticipate his participation in a variety of class levels for his training purposes. During our competitive season, [the beneficiary] will be expected to attend competitions and will have the opportunity to experience coaching in a competitive meet setting. In the summer, he will also be exposed to learning how to teach and coach in a full-scale summer camp program.

At [the petitioning organization] we have our own in-house training program designed with the intent of specifically instructing our staff on how we coach and best-coaching practices for the equipment that we use. [The beneficiary] will also be participating in coaching training from USA Gymnastics (USAG). . . . After spending time learning U.S. coaching methods through daily participation, [the beneficiary] will have the opportunity to enroll in a Coaching Accreditation Program through USAG. . . .

3. Judging – Along with training with [the petitioner's head coach and head boys coach], [the beneficiary] will attend numerous team competitive events to learn how to put judging theories into practice on the gym floor during a competition. Learning the Judging Code of Points for Women's Artistic Gymnastics will be an integral part of [the beneficiary's] training.

Additionally, once he becomes Safety-certified and passes a USAG background check [sic], [the beneficiary] will have the option of working toward accreditation to become a judge himself. . . .

4. Gym Management – [The beneficiary] will spend time on a weekly basis with [REDACTED] and [REDACTED] learning how to manage and market a successful gymnastics facility; how to schedule and run a full-scale class program meeting the needs of children of a variety of ages and abilities; and how to set up and run a productive summer camp program.

The petitioner indicated that the beneficiary would be paid for four hours of productive employment per week, which accounts for 10 percent of his weekly training time. The petitioner noted that the beneficiary would be supervising a competitive team weekend practice as part of his training program, during which time he would put into practice the techniques learned during the week.

With respect to the number of hours to be spent in classroom training versus in on-the-job training, the petitioner stated:

[O]ur entire facility is essentially a classroom. Gymnastics classes of various levels are held daily Monday through Saturday, along with competitive events scheduled at various times during the year. In order to learn coaching, judging and gym management, [the beneficiary] will have to participate in-depth in these activities. For on the job training, once he has become Safety Certified and has spent adequate time observing our methods and procedures, [the beneficiary] will take part in coaching and training the competitive team under the supervision of either one of the head coaches or one of our directors. This on the job training is a critical component of [the beneficiary's] training because it is impossible to learn how to coach, judge or manage without taking part in the activity. . . .

For actual sit-down classroom time, [the beneficiary] will take courses in safety, coaching and judging. He will be required to study the training materials for instruction, coaching and judging. . . . He will also attend classroom sessions at State and Regional Conferences.

The petitioner indicated that it already has a training program and a full-time trainer, as it regularly trains newly-hired coaches and assistants in safety techniques, coaching methods and management processes. The petitioner indicates that it typically recruits and hires athletes and former athletes for coaching positions and notes that such individuals "have experience in the sport but are in need of training similar to what we will provide the beneficiary." The petitioner stated that its directors and head coaches "serve as full-time trainers whether they are training new employees, training students in the sport of gymnastics, or training senior athletes in coaching and judging processes."

In support of the petition, the petitioner provided a seven-page training schedule listing planned activities for each month of the proposed 24-month program. The petitioner noted that the beneficiary would complete the USAG Safety Course Examination during the fourth month of the program, and the USAG Level 1 Coaching Accreditation Program during the ninth month of the program.

The petitioner's supporting documentation included registration information for the USAG Safety Certification course; a copy of a 122-page publication titled *Gymnastics Risk Management*, which appears to pertain to the USAG safety course; information regarding USAG Professional Development Program Objectives for Level I Accreditation, which is intended to "provide general and sport-specific information

critical for entry level gymnastics coaches and instructors"; the Code of Points for women's artistic gymnastics, published by the Federation Internationale de Gymnastique; an overview of the USAG Women's Junior Olympic Compulsory Exercises; copies of tests developed by the petitioner for its coaching staff in the area of compulsory routines, safety, discipline, spotting, and individual apparatus; and written coaching materials developed by the petitioner, including coaching basics, professional etiquette for coaches, injury procedures, team conditioning and workout elements, and other class procedures.

The first issue addressed by the director is whether the beneficiary already possesses substantial training and expertise in the proposed field of training. As noted above, the petitioner indicates that its program will encompass safety education, gymnastics coaching, gymnastics judging and gym management. The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) prohibits approval of an H-3 training program which is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

In its letter dated May 6, 2008, the petitioner described the beneficiary's qualifications as follows:

[The beneficiary] has competed and placed at both the state and national level of gymnastics in India. He has been participating in the sport since he was a child and has taught gymnastics as a coach in India. . . .

[The beneficiary] has the base knowledge needed in order to participate in the training being offered. He is a qualified athlete and has had some experience working as a coach/instructor in his own country. The education and training that the beneficiary already possesses is what makes him appropriate for the additional training in coaching, judging, and management that we wish to provide in order to bring his experience and education to a higher, international level. . . . The training that we are offering will build on the beneficiary's prior experience.

The director denied the petition, finding that the beneficiary appears to already possess substantial training and expertise in the field of gymnastics. The director noted the petitioner's statement that the beneficiary is "an accomplished gymnast at the national level in India," and that he would use such expertise to train the petitioner's students.

On appeal, counsel for the petitioner contends that the beneficiary does not have "expertise" in the field at all, but rather possesses the base knowledge needed to participate in the program. Counsel emphasizes that "the field of training is coaching, judging and gym management and not how to do gymnastics." Counsel further objects to the director's statement that the beneficiary would be using his expertise to train the petitioner's students noting that the petitioner has decades of experience in coaching athletes to the elite national level and does not need "the less qualified skills of the beneficiary" to train its students.

Upon review, counsel's assertions are not persuasive. While the AAO acknowledges that the intended content of the petitioner's program extends beyond "how to do gymnastics," counsel's claims fail primarily because the record does not contain sufficient evidence of the beneficiary's current level of training and experience as a coach. The petitioner indicates that the beneficiary merely has "some prior coaching experience"; however, the beneficiary states in his resume that he has professional experience working as a gymnastics coach and instructor for three different employers over the last seven years. The petitioner cites to the relatively less developed state of the sport in India, but the AAO finds insufficient basis to dismiss the beneficiary's seven

years of coaching experience as inconsequential. In the absence of some evidence of the beneficiary's duties while employed as a coach abroad, and the level at which he coached, the AAO must agree with the director that the beneficiary already possesses substantial training and expertise as a gymnastics coach. 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 second issue addressed by the director is whether the petitioner has described the benefit that will accrue to the petitioner by providing the training program, as required by 8 C.F.R. § 214.2(h)(7)(ii)(B)(6).

In denying the petition, the director acknowledged the petitioner's statements that it seeks to "bring a new perspective to its gym," "to bring an international presence and culture" to the gym, and "to build a relationship with the gymnastics community in India and to have a contact there for future international interaction." The director found that the petitioner had submitted "only vague benefits for why the beneficiary has to train with the petitioner." The director noted that the petitioner has no overseas facility to employ the beneficiary at the completion of the training, and therefore there is "no economic reason" for the petitioner to offer the training for a two-year period.

On appeal, counsel asserts that the regulations do not require that the petitioner have a facility overseas. Counsel contends that "USCIS appears to completely dismiss the value to the petitioner of increasing its international contacts within a sport that has shown clear benefits from international interaction throughout its history." Counsel emphasizes that the petitioner has an opportunity to make contacts in a country that is growing in its international gymnastics presence, and also share, through the beneficiary, their specific gymnastics knowledge as is found in the U.S. Counsel asserts that these are not "vague benefits," and that the regulations do not require an "economic reason" for the training.

Upon review, the AAO finds that the petitioner has provided an adequate statement of the benefits it expects to derive from providing the training to the beneficiary. The petitioner has satisfied the regulatory requirement at 8 C.F.R. § 214.2(h)(7)(ii)(B)(6). Therefore, this portion of the director's decision will be withdrawn.

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

In denying the petition, the director observed the petitioner's claim that "our entire facility is essentially a classroom," and noted that the petitioner "tries to convey that the daily coaching, training, judging, first aid training requirements for gymnasts, and the petitioner's normal daily business routines, make up this proposed training program."

As noted above, the petitioner initially stated that its directors and head coaches "serve as full-time trainers whether they are training new employees, training students in the sport of gymnastics, or training senior athletes in coaching and judging processes."

In response to the request for evidence, the petitioner identified a total of seven employees who would serve as trainers, including the gym's owners and five team coaches. The petitioner further stated:

Because the beneficiary's training will include several components (Gym Management, Safety, Coaching, and Judging), the beneficiary will be trained and mentored by more than one person. For Gymnastics Management and Safety Issues, the beneficiary will be primarily be trained and mentored by [the petitioner's] directors ██████ and ██████. Director and ██████ will be the primary trainer for coaching and judging with assistance from the other team coaches/trainers."

The petitioner emphasized that the proposed H-3 training program is based on the petitioner's existing training program provided to its staff, and stated that it foresees "no problems with operating a training program for the beneficiary and operating their business in a viable fashion."

On appeal, counsel emphasizes that the petitioner has a 27,000 square foot facility with all necessary equipment, seating areas for competitive events and a suite of offices for its staff. Counsel further emphasizes that the petitioner has an existing in-house training program, two owners/directors who have been operating the gym for 13 years, and eight full-time employees who are all sufficiently trained to provide portions of the training. Counsel asserts that although the petitioner has not previously trained H-3 trainees, it has trained others who have left to start their own gymnastics businesses.

Upon review, the AAO finds that the petitioner has the requisite physical plant to provide the proposed training and a number of trained coaches on its staff. However, the petitioner has not clearly outlined how training responsibilities will be allocated among its staff or how individual staff members would be able to engage in full-time training duties while also carrying out their regular duties as directors or team coaches. The petitioner's training program outline is silent on this issue. While the record shows that the petitioner has some existing internal training materials designed for coaches, the evidence of record is not persuasive in establishing that the petitioner has actually provided the proposed two-year 30-hour per week program to other trainees in the past. If the petitioner has actually provided the proposed training program to others in the past, then it is reasonable to expect it to provide a more detailed outline as to which staff members will provide the training to the beneficiary during each portion of the 24-month program. Furthermore, the materials provided appear to be designed to assess and improve the knowledge and skills of working staff members who are engaged in productive employment, and not for trainees.

Therefore, in light of the lack of evidence as to how the training and supervision will be provided, as discussed above, the petitioner's claim that all of its directors and head coaches are "serve as full-time trainers" is not sufficient to meet the petitioner's burden of proof. The AAO concurs with the director's determination that the petitioner has not established that it has sufficient trained manpower available to provide the proposed training.

The next issue addressed by the director is whether the petitioner established the number of hours that will be spent, respectively, in classroom and on-the-job training, and otherwise established that the program does not deal in generalities. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) requires the petitioner to show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The petitioner must also describe the type of training and supervision to be given, and the structure of the training program. 8 C.F.R. § 214.2(h)(7)(ii)(B)(1). The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) prohibits the

approval of any training program that deals in generalities with no fixed schedule, objectives, or means of evaluation.

As noted above, the petitioner initially stated that its "entire facility is essentially a classroom," with classes of various levels being held six days per week and various competitive events held throughout the year. The petitioner suggested that the beneficiary would undergo on-the-job training "once he has become Safety Certified and has spent adequate time observing our methods and procedures." The petitioner indicated that the on-the-job training would consist of taking part in coaching and training the competitive team under the supervision of a head coach or director." The petitioner noted that the beneficiary's "sit-down classroom time" would consist of taking courses in safety, coaching and judging and attending classroom sessions at state and regional conferences.

The petitioner submitted a training schedule for the beneficiary which indicated that he would be in training daily from 2:00 to 8:00 p.m., but it did not clearly indicate what portion of this time would be classroom instruction as opposed to on-the-job training.

Therefore, the director requested that the petitioner "submit additional evidence to explain how much time will be spent in classroom instruction and how much will be spent in on-the-job training." The director also requested additional evidence to establish that the petitioner has an actual, well-structured program.

In response to the director's request, the petitioner referred the director to the "detailed classroom syllabus/training schedule" submitted at the time of filing. The petitioner further stated:

Virtually all of the training that goes on at [the petitioner's facility] is structured whether it is for training staff, teaching students, or running the business. Classes run on a daily basis throughout the year. When staff is trained in business operations, coaching or judging, there are set time periods to cover the material needed.

In addition, the petitioner stated:

For "sit-down" classroom time, the beneficiary will take courses in various aspects of safety, coaching, judging and management. He will be required to study the training materials Much of the coaching and judging material is difficult to master and will take time to learn. He may also attend classroom sessions at State and Regional Conferences. Otherwise, his classroom time will either be spent in the [petitioner's] office with his trainers learning management and operation, on the gym floor with his trainers learning to apply the material covered in his "sit down" training time along with additional material that can only be taught in a gym setting, or in a few sessions with specialized trainers [the petitioner] brings in to train both their employees and the beneficiary in complicated material such as judging.

The classroom time that is spent on the gym floor is a critical component of the beneficiary's training because it is impossible to learn how to coach, judge or manage without interacting with the athletes/students.

The classroom time, whether sitting and learning the printed material or being trained in the gym in aspects of safety, coaching, management or judging will be the primary use of the beneficiary's training time. Based upon the submitted classroom training schedule/syllabus . . . , nearly the entire first 10 months of the beneficiary's training time will be classroom instruction.

For supervised on-the-job training once he has become Safety Certified and has spent adequate time learning [the petitioner's] methods and procedures which will take months of classroom time, the beneficiary will take part in learning to coach and train one of the competitive teams along with one of his trainers. This would take up about 8 hours of his time per week, or only about 20% of his training time mostly in his second year of training. Again, this type of training is critical to [the petitioner's] purpose of training the beneficiary to be able to open his own gym and coach at an elite level once he has completed the program.

In denying the petition, the director determined that the petitioner did not provide evidence of the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. The director acknowledged the training materials submitted, but found that the documentation "covers such basic material. . . that the H-3 training material appears to deal in generalities with no objectives, or means of evaluation regarding these basic concepts."

On appeal, counsel for the petitioner emphasizes that the petitioner's response to the RFE clearly shows the number of hours that will be spent, respectively, in classroom instruction and on-the-job training. Counsel notes that only about 20 percent of the beneficiary's training time, primarily in the second year of the program, will be spent in on-the-job instruction.

With respect to the director's conclusion that the program deals in generalities, counsel emphasizes that USCIS "fails to recognize the lengthy and complicated materials that were submitted with the original I-129 submission." Counsel acknowledges that the material submitted in response to the RFE was basic, but was only intended to supplement the 500 pages of instructional material submitted at the time of filing. Counsel asserts that those materials "cover complicated technical gymnastics material that will take months for the beneficiary to learn and requires both reading the material and seeing it demonstrated live with an instructor who can explain the material being covered."

Upon review, counsel's assertions are not persuasive. The petitioner has not consistently indicated the amount of time to be devoted to classroom instruction versus on-the-job training, nor has it otherwise explained the type of training and supervision to be given, and the structure of the training program. *See* 8 C.F.R. 214.2(h)(7)(ii)(B)(1) and (3).

First, the AAO finds that the petitioner has submitted inconsistent information regarding how the beneficiary's time will be allocated between classroom instruction and on-the-job training. At the time of filing, the petitioner emphasized that its "entire facility is a classroom," and noted that the beneficiary would have to participate in-depth in coaching, judging and gym management and "take part in coaching and training the competitive team" under the supervision of a head coach or director. This statement implied that a large portion of the beneficiary's time would be devoted to on-the-job training.

The petitioner stated that the beneficiary's "actual sit-down classroom time" would be devoted to courses in safety, coaching and judging, and attending classroom sessions at State and Regional Conferences. The petitioner provided materials related to the USAG Safety Course, the USAG Level I Judge's Accreditation requirements, and the Code of Points for Women's Artistic Gymnastics.

The petitioner further stated that "at least five days a week, [the beneficiary] will be training with one of our head coaches in learning to coach competitive teams, but we also anticipate his participation in a variety of class levels for his training purposes." The petitioner stated that the beneficiary would also have an opportunity to "experience coaching in a competitive meet setting," and "be exposed to learning how to teach and coach in a full-scale summer camp program." The petitioner indicated that the beneficiary would be "learning coaching methods through daily participation." With respect to the beneficiary's management training the petitioner stated that the beneficiary will "spend time" with the petitioner's owners learning management, marketing, scheduling and programming techniques. The petitioner did not indicate how this management training would be delivered.

In response to the RFE, the petitioner attempted to clarify how much time would be devoted to classroom versus on-the-job training, noting that most of the beneficiary's time during the first ten months of the program would be spent in a classroom. The petitioner stated that, thereafter, the beneficiary would spend no more than eight hours per week learning to coach and train one of the competitive teams along with one of his trainers. The petitioner indicated that such activities would require only 8 hours per week, or 20 percent of the beneficiary's time. This statement appears to be inconsistent with the petitioner's earlier statement that the beneficiary will be spending five days per week working directly with coaches in multiple coaching settings, such as competitive teams, regular classes, camps, pre-school classes, tumbling classes, and public school programs. The petitioner's training schedule also indicates that the beneficiary's training would encompass instructing all types of classes offered by the petitioner. 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).

As noted above, the petitioner submitted a seven-page training schedule for its 24-month training program. Upon review, the training schedule sheds no additional light on the number of hours to be devoted to classroom instruction or on-the-job training, and provides little insight into the type of training and supervision the beneficiary will be receiving even on a month-to-month basis. For example, the petitioner indicates that during the fifth month of the program, the beneficiary will undergo the following training:

Weeks 1-4 –

Introduction to flexibility, and all components including static and eccentric. Applied Knowledge training – Conditioning, plyometrics and flexibility.

Additional – 2 Competition Weekend Meets (1 day each)

Evaluation: Oral Examination and Review if needed

Coaching – Observational Examination on Implementing Principals Covered

The petitioner did not, for example, specify what is entailed by "applied knowledge training," or "observational examination." It is unclear who would provide the training, or how the training objectives would be achieved. The petitioner provides a similar summary explanation for each month of the 24-month program. The petitioner indicated that the sixteenth month of the program would involve, in part: "Applied knowledge week in helping to review the set-up for Fall. This will be critical learning and understanding. Application of judging to coaching techniques, preparing for the upcoming competitive season." Again, the petitioner did not explain how these topics will be covered through classroom or on-the-job training, what activities would be completed by the beneficiary, or how he would be evaluated.

Overall, the AAO finds that the information contained in the record of proceeding related to the training program itself is vague in nature, and leaves the AAO with very little idea of what the beneficiary would actually be doing on a day-to-day basis for the duration of the program, or how much time would actually be devoted to on-the-job training and classroom instruction. The petitioner is not required to provide an exhaustive account for every minute of the beneficiary's time, but a seven-page outline for a 24-month program is simply deficient to describe with specificity the program's structure, objectives and means of evaluation. 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. 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)).

Further, the AAO agrees with the director that the training materials submitted by the petitioner are of limited probative value in determining what the beneficiary would actually be doing on a day-to-day basis. Although the petitioner has submitted voluminous documentation published by the USAG and international gymnastics federation, and indicates that it will take the beneficiary a long time to adequately learn the materials, the petitioner fails to explain how the beneficiary will actually spend his time while learning the judging, management, coaching and safety components of the program.

The petitioner has provided overall objectives for its program, but broad objectives are 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 has failed to establish that its proposed training program does not deal in generalities. The petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner has also failed to adequately show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training, and the type of training and supervision to be given and the structure of the training program. 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) and § 214.2(h)(7)(ii)(B)(1).

The fifth and final issue addressed by the director is whether the petitioner has explained the reasons why the proposed training cannot be obtained in the beneficiary's country and why it is necessary for the beneficiary to be trained in the United States. 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. 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to submit evidence that the training is not available in the beneficiary's home country.

In denying the petition, the director observed that parts of the proposed training program, including the Safety Certification Course and the Coaching Accreditation, are online materials that could presumably be obtained in the beneficiary's home country of India. The director further found that portions of the training are based on "basic material" such as articles on customer service, professional etiquette, business tips, injury procedures, the benefits of gymnastics and other basics of the sport. The director questioned why such "basic training" cannot be obtained in the alien's home country of India.

Upon review, the AAO concurs with the director's conclusion. However, the director did not indicate whether he evaluated the petitioner's explanations regarding why the proposed training cannot be provided in India. The AAO will address all evidence pertaining to this issue.

The petitioner explained at the time of filing that gymnastics is "extremely well organized" in the United States and "more limited in India." The petitioner noted that the United States is well-represented in all levels of gymnastics, including the Olympic level, while India "is not a regular competitor at the Olympic level" and "does not have an annual National Congress covering the extensive range of topics which are available at the USAG National Congress or at regional conferences held here in the U.S. on a regular basis."

In support of the petition, the petitioner provided letters from two Indian gymnastics coaches. [REDACTED] states that the beneficiary "has a good future as a coach in the sport and is interested in learning more about judging." [REDACTED] further states:

It would be a very good opportunity for [the beneficiary] to be able to train in gymnastics in the United States because he would be able to learn different ways of coaching and increase his knowledge of judging including having courses in U.S. judging which are not available in India.

We have an active and growing program of gymnastics here in India associated with the Gymnastics Federation of India, we do not have the same level of organization as is found in the U.S. Through his training in the U.S., [the beneficiary] will have increased opportunity to learn more about coaching, judging and different approaches to the sport on an international level and to bring that knowledge and expertise home.

[REDACTED], who states that he is a qualified gymnastics coach with the National Institute of Sports, stated:

Gymnastics is an international sport and in India we are trying to grow our experience in training and management of high level gymnasts. The United States is very strong in gymnastics and we would like to see an athlete of [the beneficiary's] ability gain an international understanding of the sport and what is involved with training, coaching and judging from a U.S. perspective. He would certainly have access to training that is not available here in India which he could then bring home and teach to young athletes here.

The director did not directly address this issue in the RFE, but did request that the petitioner "submit a statement establishing the positions or duties for which the beneficiary will be prepared at the conclusion of the proposed training." The petitioner noted in response that the beneficiary would be qualified to: be an elite-

level coach for international level athletes; to open and operate his own gymnastics training facility; to manage and run a complete recreational and competitive gymnastics program; to qualify to judge upper-level competitive events; or to "help increase the level of gymnastics performance in India to improve India's ability to move from the regional arena to the global arena in gymnastics competition."

The petitioner stated that, because India is "still trying to establish its [gymnastics programs], this type of integrated training in operating a full-service gymnastics training facility is not available in India." The petitioner further noted that "India is currently in the process of growing its national gymnastics program and participating in the sport internationally." The petitioner submitted a Report of the General Secretary of the Gymnastics Federation of India, for the year ended March 31, 2007. The General Secretary reports that the Indian team has "a strong team of technical officials" including internationally qualified judges and coaches, and notes the importance of "foreign exposure" to the development of India's gymnasts, coaches and judges.

On appeal, counsel for the petitioner notes that, while the USAG Safety Certification Course and USAG Coach Accreditation course material can be ordered online, "it does not mean that the beneficiary does not need a qualified instructor to help him effectively learn the material." Counsel states:

The beneficiary cannot be trained in this material in his home country because the material is based on U.S. standards – which tend to be much more rigorous and safety-oriented than what is found in many other countries, including India. One of [the petitioner's] goals in providing this training is to share U.S. expertise with a qualified beneficiary who can take the knowledge back to his home country to increase the level of knowledge there. The Safety Certification and Coaching Accreditation are only part of the training, but like the rest of the training proposed in this program, the beneficiary needs an experienced instructor to help him learn the material.

Upon review, the petitioner has not established 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.

As noted by the director, at least one of the courses included in the petitioner's program, the USAG Safety course, can be completed on-line. While counsel asserts that the beneficiary requires an instructor to help him learn the material, the information provided regarding the USAG Safety Certification course indicates that the course can be completed on-line, takes approximately four hours to complete, and is available to most members of USAG who are at least 15 years old.

The USAG Level I Accreditation for coaches provides "general and sport-specific information critical for entry level gymnastics coaches and instructors." The course involves watching a video and completing a workbook based on the video; reading an 80 page *Rookie Coaches Gymnastics Guide* and completing a multiple choice examination; and reading *Sequential Gymnastics II*, a 108-page text, and completing a multiple choice examination. Students are expected to complete all components and mail in their completed tests in order to obtain the certification. Again, it appears that this is intended to be a self-guided course available to anyone who pays the requisite fees and purchases the materials. The claim that the beneficiary, who has years of coaching experience, would require an experienced instructor to assist him in learning the material presented in either introductory USAG course is not supported by the evidence of record.

Furthermore, while India clearly does not have nearly the number of internationally competitive gymnasts that are present in the United States, there is no basis to conclude that there are no gymnastics programs in India comparable to that operated by the petitioner. The beneficiary himself has already taught gymnastics in India's public schools, coached at an Indian gymnastics facility, has competed as an athlete at the junior and senior national level in India. The petitioner's facility teaches gymnastics to children at all levels up to and including competitive teams who compete regionally and nationally. The AAO cannot find a basis for the petitioner's statement that completion of the program will prepare the beneficiary to coach elite athletes competing at the international level. The petitioner does not claim that its own directors and head coaches have trained athletes who compete at the international level. The fact that the United States has a larger and more established gymnastics infrastructure than India does not automatically elevate the petitioner's own training program to the same rarified status as USA Gymnastics. The record shows that India has national coaching and judging programs available to its gymnastics professionals, and contains evidence that Indian gymnastics professionals have been certified as judges and coaches at the international level. It is evident that there are gymnastics facilities operating in India, and youth athletes competing at the national level. As such, it is reasonable to believe that there are facilities, programs, and trained coaches for these athletes.

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.

In addition, according to the training schedule, several months of the proposed program would be devoted to general marketing and administrative activities, such as creating and distributing advertising flyers, learning to use billing software, organizing events, using a copy machine, fax machine, working at the gym's front desk, and learning customer service skills. The petitioner has not established that training in these general business skills is unavailable in India.

The AAO acknowledges the statements from Indian coaches ██████████ and ██████████, who indicate that the beneficiary would have access to training in the United States that is not available in India. The brevity of the statements and lack of accompanying explanation or evidence undermines the probative value of these opinions. Neither ██████████ nor ██████████ indicated that they were familiar with the details of the petitioner's training program, nor did they refer to any specific aspect of the petitioner's program that sets it apart from the training available in India. 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 gymnastics coaching, judging or facilities management could not be obtained in the beneficiary's home country of India. The petitioner has failed to satisfy the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1). Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the remaining issue to be addressed 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).

As discussed above, the petitioner has not, in fact, established what the beneficiary will actually be doing during much of the two-year training program. Based on the minimal explanation regarding the actual structure, schedule and content of the training program, and the beneficiary's day-to-day activities, the AAO cannot conclude whether the beneficiary would or would not be engaged in more than incidental productive employment beyond the four hours per week of productive employment acknowledged by the petitioner. It is the petitioner's burden to set forth the training program with specificity. In some instances, it appears that the beneficiary's "on-the-job training" will consist of performing coaching duties under supervision, much like an assistant coach, or assisting office staff with routine administrative functions. 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.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown 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. at 1043.

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.