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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 01 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Michael T. Kelly
Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a three-employee real estate company established in 2008. In order to provide training to the beneficiary for a period of 18 months, the petitioner seeks to classify her as a nonimmigrant alien trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The director denied the petition, concluding that the evidence of record failed to: (1) demonstrate that the proposed training is not available in the alien's own country; (2) contain a statement describing the type of training and supervision to be given, and the structure of the training program; (3) establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified in the petition; (4) demonstrate that the beneficiary will not engage in productive employment beyond that incidental and necessary to the training; and (5) demonstrate that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

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

Upon review, the AAO finds that the evidence of record fails to overcome the director's grounds for denying the petition. Consequently, the appeal will be dismissed, and the petition will be denied.

I. STANDARD OF REVIEW

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
>
> * * *
>
> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
>
> * * *

> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

The AAO conducts its review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe.* Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination that the petitioner did not establish its eligibility for the benefit sought was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence submitted in support of this petition, both separately and in the aggregate, the AAO finds that the evidence of record does not establish that the petitioner's claim that the proposed training program meets the requirements of the H-3 program is "more likely than not" or "probably" true. In other words, as the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claim is "more likely than not" or "probably" true.

II. THE LAW

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(1)(ii)(E) states, in pertinent part, the following:

> An H-3 classification applies to an alien who is coming temporarily to the United States:

(*1*) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution. . . .

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part, the following:

(i) *Alien trainee.* The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.

* * *

(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.

III. THE PETITIONER

In its December 7, 2011 letter of support, the petitioner described its business model as follows:

> We specialize in the management and disposition of residential and commercial bank owned properties. Our company also provides a single point of contact for asset

> managers and lenders. [The petitioner] seeks to increase environmental awareness, as such we focus on implementing sustainable building practices into our properties. We continually seek additional opportunities to be "green" to benefit our residents, owners, and the surrounding communities.

In its April 9, 2012 letter, the petitioner referenced its "intricate knowledge of the Green Real Estate Industry."

On the Form I-129, which it signed on December 6, 2011, the petitioner stated that it had three employees, gross annual income of $962,857, and net annual income of $655,657. The petitioner also submitted a copy of its 2010 federal income tax return, in which the petitioner reported a total income of $799,969, an ordinary business income of $655,651, and no salaries or wages paid to any employees.

IV. THE PROPOSED TRAINING PROGRAM

In its December 7, 2011 letter, the petitioner stated described the training program as follows:

> [The petitioner's] training program in Green Real Estate Management is an 18-month in-house training program and will take place at in Los Angeles, California. The purpose of the program is not to productively employ the trainee in the United States, but to offer training in preparation which will benefit the Trainee's opportunities abroad.

The petitioner also stated the following in that same letter:

> The goal of the training program is to provide [the beneficiary] with the expertise[,] knowledge[,] and practical experience in the green real estate industry.

The petitioner claimed that the beneficiary would spend 60% of her time in classroom instruction, 30% of her time observing the petitioner's operations and activities, and 10% of her time receiving practical, on-the-job training. The petitioner stated that although a limited amount of the on-the-job training would constitute productive employment, any such time would be strictly supervised.

The petitioner stated the following with regard to the 111-page training manual that it submitted:

> Although we utilize the attached training materials, the primary source of information will come from the trainers themselves.

In its April 19, 2012 letter the petitioner claimed that the Philippines has only recently begun "exploring green standards," and that, as such, "training in real estate and green standards is not available" there. The petitioner stated the following regarding its motivation for providing this training:

> [O]ur company is offering this training to prepare [the beneficiary] to acquire a job within the real estate industry abroad. Assisting those who probably would not have

> received any help otherwise significantly outweighs the cost that we will incur in providing the training. We are willing to provide [the beneficiary] with paid training because it will greatly benefit her future in the real estate industry overseas.

According to the petitioner, the training program would be divided into eleven parts: (1) Introduction to Property Management Plans, which would last four weeks; (2) Achieving Green Standard, which would last twelve weeks; (3) Leasing of Real Property, which would last five weeks; (4) Real Estate Retailing for Property Managers, which would last five weeks; (5) Financial Tools, which would last four weeks; (6) Maximizing Profits: Growth Strategies for Real Estate Management Companies, which would last four weeks; (7) Property Maintenance and Risk Management, which would last five weeks; (8) Operations and Marketing of Real Property, which would last five weeks; (9) Advanced Real Property Asset Management, which would last eight weeks; (10) Evaluation of Management and Investment, which would last eight weeks; and (11) Sustaining Building Management, which would last twelve weeks.

V. PRELIMINARY OBSERVATIONS REGARDING PETITIONER'S CLAIMS AND EVIDENCE OF RECORD

Before analyzing the evidence of record under the applicable statutory and regulatory authorities, the AAO will first make two general observations regarding that evidence, and the petitioner's claims regarding that evidence, which undermine the overall credibility of the petition.

The AAO finds first that the evidence of record does not establish the petitioner's own knowledge regarding the "green real estate industry." While the AAO does not question the petitioner's status as a real estate company, the evidence of record does not indicate the percentage of its business that "green" real estate transactions comprise or established the extent to which it may have successfully incorporated "green" real estate practices into the various aspects of its business, such as property management and maintenance for example. While definitive percentages would not be required, the record of proceeding as presently constituted does not demonstrate that the petitioner is sufficiently involved with leasing, selling, managing, maintaining, or otherwise dealing with "green" aspects of the real estate industry to equip it with an adequate basis of knowledge from which to provide substantial training in the "green real estate industry."

Nor does the evidence of record make clear the relationship between the petitioner and the various companies from which the petitioner submits documentation. As indicated by the cover page to this decision, the petitioner filed this petition as [redacted]" with a Federal Employer Identification Number (FEIN) of [redacted] and claimed it has three employees. However, when asked to submit copies of its Quarterly Wage Reports, the petitioner submitted documentation pertaining to a company called [redacted] LLC," which had been assigned the FEIN [redacted], and which employs more than three individuals. The record of proceeding also contains information regarding '[redacted]' and the "[redacted]" However, the evidence of record does not make clear the relationship between any of these companies.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO further observes that, while the petitioner appears to emphasize the "green" aspects of its training and the claimed unavailability of such training, the content of its Training Outline and Schedule suggests that the greater portion of subject matter and the training-time focus on matters generic to the real estate industry in general, rather than just the niche to which the petitioner refers as the "green real estate industry" with whatever associated standards and practices may be peculiar to that niche.

VI. UNAVAILABILITY OF SIMILAR TRAINING IN THE BENEFICIARY'S OWN COUNTRY

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) precludes approval of a petition in which the petitioner fails to establish that similar training is unavailable in the beneficiary's own country. The beneficiary of the instant petition is a citizen of the Philippines.

As evidence that the proposed training is not available in the Philippines, the petitioner submitted three letters and several news articles. However, upon review the AAO agrees with the director that this evidence does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*).

The AAO will first address the three letters, which counsel cites as expert opinions.

The first letter was written by who wrote as Board Secretary VI of the Central Luzon. In her February 22, 2012 letter, Ms. stated the following:

> Region III through its promotes productivity and quality assurance techniques among business enterprises in Central Luzon. . . .
>
> However, the aforesaid training seminar [offered by the petitioner] is not among the several productivity program courses, being offered by the

This letter does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) for two reasons. First and foremost, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) requires the petitioner to demonstrate that the training it seeks to provide the beneficiary is not available in the beneficiary's own country, and this letter only addresses one region, Region III, of the Philippines. Second, the evidence of record does not establish that merely because the itself does not offer a given course, no other public or private organizations do so.

The second letter submitted by the petitioner is similarly flawed. That letter was prepared by , who wrote on behalf of the

In his February 14, 2012 letter, Mr. stated the following:

> [T]his is to certify that the training on quality assurance techniques on Green Standards are not available as a training course in this office[.]

The fact that the does not offer similar training does not establish that no other public or private organizations in the Philippines do so.

The third and final letter submitted by the petitioner is also similarly flawed. That letter was prepared by who wrote as the Regional Director of the . In his March 20, 2012 letter, Mr. stated the following:

> This is to certify that based on available records of this Office, that there is no institution or training center in Region III which offers the following technical vocational courses:
>
> - Real Property Management
> - Protfolio [sic] Management
> - Achieving Green in Real Property Management

Again, this letter does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) for two reasons. First and foremost, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) requires the petitioner to demonstrate that the training it seeks to provide the beneficiary is not available in the beneficiary's own country, and this letter only addresses one region, Region III, of the Philippines. Second, the evidence of record does not establish that merely because itself does not offer a given course, no other public or private organizations do so.

For all of these reasons, these three letters do not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*). 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'r 1988).

Nor are the news articles persuasive. The AAO does not question whether electricity rates are rising in the Philippines, whether that country is prone to earthquakes, or whether "green" real estate is an emerging subset of the real estate industry in the Philippines. Again, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*1*) requires the petitioner to demonstrate that the training it seeks to provide the beneficiary is not available in the beneficiary's own country. These articles do not satisfy that regulation. Further, and at a more foundational level, the AAO questions how, if training in the "green" real estate industry is not available in the Philippines, the industry exists at all. In other words, the record contains evidence that Quezon City began enforcing "green building standards" in

April 2011.[1] It is unclear to the AAO how real estate professionals in Quezon City or, for that matter, anywhere else in the Philippines, have been able to function if they cannot obtain knowledge of "green real estate" without leaving their country.

VII. STATEMENT DESCRIBING THE TYPE OF TRAINING AND SUPERVISION TO BE GIVEN, AND THE STRUCTURE OF THE TRAINING PROGRAM

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*) requires the petitioner to submit a statement describing the type of training and supervision to be given, and the structure of the training program. The AAO agrees with the director's determination in that it finds the petitioner has failed to describe the substantive structure of the training program. Also, we specifically find that the training-program table incorporated into the petitioner's August 17, 2012 letter submitted on appeal addresses the training in subject/duration segments that fail to establish even a weekly schedule of substantive training.

As indicated above, the record of proceeding contains a 111-page training manual. The petitioner, however, fails to explain precisely how this manual will be utilized during the course of the 18-month program. With 111 pages of materials to cover over a period of 18 months, this manual will provide approximately six pages of reading material each month. It is not clear to the AAO how the petitioner will be able to stretch this material over such a long period of time, and the other materials submitted into the record, such as the building case studies, are too few in number to fill that gap. While the petitioner's assertion that most of the training will come from the trainers is acknowledged, the record of proceeding as currently constituted does not meet the petitioner's burden. The petitioner has failed to submit a statement describing the structure of the training program and has consequently failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(*1*).

VIII. PHYSICAL PLANT AND SUFFICIENTLY TRAINED MANPOWER TO PROVIDE THE TRAINING SPECIFIED IN THE PETITION

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[1] The petitioner submitted a document indicating that a bill requiring government buildings in the Philippines to comply with "green building standards" was introduced in the House of Representatives of the Philippines on an unspecified date. Although counsel referred to this bill as having "mandate[d]" such compliance, the record contains no evidence that this bill was ever passed into law. 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 AAO will therefore accord no evidentiary weight to this document.

However, even if this bill was passed into law, the question raised by the AAO above would not only remain, but would actually become even more important given that the Philippines as a whole covers a much wider area than Quezon City alone. If every single government building in the Philippines is required to comply with "green building standards," who has been managing the construction, sale, and/or management of these buildings, if training on such standards is not available in that country?

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) forbids approval of a petition where the evidence of record fails to establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

The petitioner claims that the training will be conducted by its three employees. However, the record does not make clear how those individuals will be able to attend to their normal job duties while providing 18 months of primarily classroom-based training to the beneficiary. The evidence of record does not satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G).

IX. PRODUCTIVE EMPLOYMENT BEYOND THAT INCIDENTAL AND NECESSARY TO THE TRAINING

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*3*) requires the evidence of record to demonstrate that "[t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and as a corollary, 8 C.F.R. § 214.2(h)(7)(iii)(E) forbids approval of a training program which "[w]ill result in productive employment beyond that which is incidental and necessary to the training."

As this issue was not addressed on appeal, the petitioner has not overcome this ground of the director's decision.

X. PLACEMENT IN A POSITION WHICH IS IN THE NORMAL OPERATION OF THE BUSINESS AND IN WHICH CITIZENS AND RESIDENT WORKERS ARE REGULARLY EMPLOYED

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(*2*) forbids approval of a petition in which the evidence of record fails to establish that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

As this issue was not addressed on appeal, the petitioner has not overcome this ground of the director's decision.

XI. CONCLUSION AND ORDER

As discussed above, the evidence of record does not overcome any of the grounds upon which the petition was denied.[2] Consequently, the appeal will be dismissed and the petition will be denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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[2] As each the five grounds upon which the director denied the petition independently preclude approval of this petition, the AAO will not address any of the additional deficiencies it has identified on appeal.

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