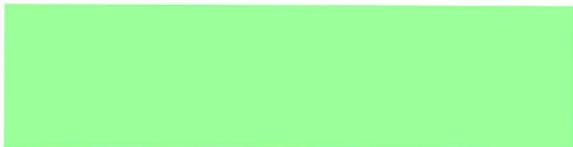




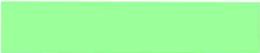
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 29 2014**

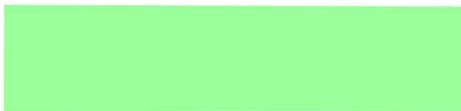
OFFICE: VERMONT SERVICE CENTER

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:

SELF-REPRESENTED

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 summarily dismissed. The petition will be denied.

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a 30-employee company that designs and builds coal processing and handling facilities. In order to employ the beneficiary in what it designates as a Process Engineer position for a period of seven months, the petitioner seeks to classify him as a nonimmigrant trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The director denied the petition, concluding that the evidence of record "clearly shows that the petitioner does not have a training program."

The record of proceeding before us 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.

II. FAILURE TO IDENTIFY ANY ERRONEOUS CONCLUSION OF LAW OR STATEMENT OF FACT IN THE DIRECTOR'S DECISION

The petitioner's statements made in the Form I-290B and the letter submitted on appeal do not specifically identify any error in the director's November 15, 2013 decision denying the petition.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). As the petitioner identifies no specific, erroneous conclusion of law or statement of fact by the director, the appeal must be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

III. REVIEW OF THE DIRECTOR'S NOVEMBER 15, 2013 DECISION

Although the failure of the evidence of record to satisfy 8 C.F.R. § 103.3(a)(1)(v) mandates summary dismissal of the petitioner's appeal, in the interests of a more comprehensive and informative decision we will discuss why the evidence in the record would not support approval of the petition on its merits, even if the petition were not subject to summary dismissal.

A. 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:

(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.

B. The Proposed Training Program

The petitioner described its program on the Form I-129 as follows:

[REDACTED] based in [Luxembourg], is the Parent Company of [the petitioner] [which is located in] [REDACTED], West Virginia and [REDACTED] [which is located in] Beijing China. Both of these companies design and build Coal

Processing and Coal Handling Facilities. [REDACTED] has designed and built 500 plus facilities in China during the last 12 years using patented technology. The [petitioner] has been in business 45 plus years and has designed and built 166 facilities in the U.S. Both companies have manufacturing facilities.

The [petitioner] and [REDACTED] have not done any significant amount of business outside of their respective domestic markets. The [petitioner] in partnership with [REDACTED] and under the banner of [REDACTED] plans to enter overseas markets in Australia, Mongolia, India, Canada, Russia, and South America. Engineering, design, project management and manufacturing of equipment for the overseas projects will be done jointly in China and the U.S.A. [REDACTED] will make use of skills, experience, and resources of both the companies to compete in the international market.

The [petitioner] plans to open another office in [REDACTED] North Carolina and will expand its operations in the U.S. requiring [the] hiring of more engineers, managers, and AutoCAD designers; this is in anticipation of growth in [its] overseas business.

[The beneficiary] is an employee of [REDACTED]. He will need to spend up to six (6) months in [the petitioner's] [REDACTED] West Virginia office in order to understand [the] technical and non-technical systems currently being used. Conversely, [the petitioner] needs to become familiar with the engineering and design practices of [REDACTED] in China. This is necessary to coordinate the activities of both companies jointly working on International Projects.

In its undated submitted in response to the director's October 2, 2013 RFE, the petitioner claimed that the beneficiary does not need any training, and stated the following:

[T]here is no need of a formal training program and/or training classes.

In its December 13, 2013 letter submitted on appeal, the petitioner states the following:

[The beneficiary's] trip is not related to any kind of training. His temporary work assignment at [the petitioner] will be to enhance the working relationship between the two (2) companies.

C. Analysis

In his November 15, 2013 decision denying the petition, the director stated the following:

As per your own statement the beneficiary is not coming to the United States seeking training but more as an intra company transfer for the purpose of exchanging information on a project(s) with their U.S. counterparts.

The documentation submitted clearly shows that the petitioner does not have a training program.

Section 101(a)(15)(H)(iii) of the Act limits the H-3 classification, in part, to aliens "coming temporarily to the United States as a trainee." As the petitioner concedes that such is not the case here, the evidence of record does not satisfy section 101(a)(15)(H)(iii) of the Act.

As the evidence of record does not satisfy this threshold requirement, it would serve no purpose to conduct a full analysis of each H-3 criterion set forth in the implementing regulations. However, we will note briefly that the evidence of record does not establish any of the following:

- That the basis of the petition is proposed training that is unavailable in the beneficiary's own country, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(1);
- 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 required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(2);
- That the beneficiary will not engage in productive employment unless such employment is incidental and necessary to training that had been specified in the petition, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(3).

Nor does the current evidence of record satisfy the evidentiary requirements contained at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1)-(6) or overcome the H-3 restrictions contained at 8 C.F.R. § 214.2(h)(7)(iii)(A)-(H).

As such, even if the petitioner's failure to specifically identify a specific, erroneous conclusion of law or statement of fact by the director did not mandate summary dismissal of this appeal, the petition would be denied on its merits.

IV. CONCLUSION

As the petitioner did not specifically identify any specific, erroneous conclusion of law or statement of fact by the director in his decision denying the petition, the appeal must be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v). However, even if that were not the case, the petition would still be denied as discussed above.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.

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