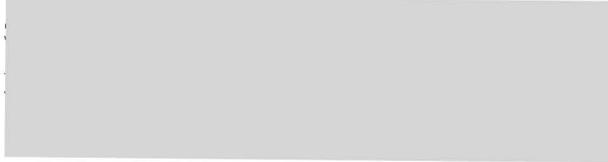




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 27 2015

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 appeal will be dismissed.

On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner describes itself as an insurance agency that was founded in [REDACTED] employs 21 persons, and has a gross annual income of "\$2.6 million." In order to employ the beneficiary in what it designates as an "Insurance Training Program Trainee" position for a period of 19 months, the petitioner seeks to classify her 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 this petition based upon her evaluation of the evidence of record under the regulations governing the H-3 program. The Director specified numerous independent grounds for denying the petition, each of which our decision shall separately address.

Upon review of the entire record of proceeding, as expanded by the petitioner's submissions on appeal, we find that the evidence of record as now constituted overcomes some but not all of the Director's grounds for denying the petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

The record of proceeding before us 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 decision denying the petition; and, on appeal, (5) the Form I-290B (Notice of Appeal or Motion), a brief, a copy of the Director's decision denying the petition, and a copy of the record of proceeding as constituted when the Director issued her decision.

I. MODE AND STANDARD OF REVIEW

We conduct appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)). Thus, we base our decisions upon our independent review of the entire record of proceeding, without deference to contrary findings and conclusions that may have been reached by the Director. In conducting our *de novo* review, we apply the "preponderance of evidence" standard of review as articulated in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). Accordingly, we 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. If the petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof.

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:

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 regulations directly addressing the H-3 alien-trainee program appear at 8 C.F.R. § 214.2(h)(7). The definitional provision, at 8 C.F.R. § 214.2(h)(7)(i), states:

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.

The particular rules governing petitions for H-3 trainees divide into two major parts. They are:

- "Evidence required for petition involving alien trainee" - at 8 C.F.R. §§ 214.2(h)(7)(ii)(A) ("Conditions") and (h)(7)(ii)(B) ("Description of training program"); and
- "Restrictions on training programs for alien trainee" - at 8 C.F.R. § 214.2(h)(7)(iii).

Subparagraph (A) of the section on required evidence, at 8 C.F.R. § 214.2(h)(7)(ii), states the *conditions* as follows:

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.

Subparagraph (B) at 8 C.F.R. § 214.2(h)(7)(ii), specifies aspects of the training program that must be described in the record. It states:

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 [(a)] why such training cannot be obtained in the alien's country and [(b)] 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.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii), *Restrictions on training program for alien trainee*, provides a list of characteristics that will preclude an H-3 training plan from being approved as a valid basis for an H-3 trainee petition. The regulation reads as follows:

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 PROPOSED PROGRAM

The petitioner outlines the training program in its "Insurance Training Program" ("ITP") document. The "Course Objective & Overview" section of the document introduces the program as a 19-month "educational training program in insurance" that is "designed to implement the completion of the company's [REDACTED] Plan." It states that this goal will be achieved by training capable persons "in the company's proprietary methods, systems, technologies" so that they may adequately staff the opening of a Korean branch of the petitioner. According to this introductory section, successful completion of the program "will allow trainees to implement the practices and methods of [the petitioner] to create and sell insurance products in a new market."¹

Also, this introductory overview states that, in addition to the aforementioned training "in the company's proprietary methods, systems, technologies," the training program would:

- Include "in-depth analysis of multiple lines of insurance sold and/or underwritten" by the petitioner, including insurance of the following types: [(1)] property insurance, [(2)] crime and equipment, [(3)] commercial general liability, [(4)] auto, [(5)] employer liability, [(6)] workers compensation, [(7)] health, [(8)] bond, [(9)] and personal.
- Instruct trainees in "the procedural evaluation of risks and exposures of potential clients to determine premium rates."

¹ The only documentary evidence of the petitioner's "[REDACTED] Plan" consists of (1) a two-page "Collaboration Agreement" between the petitioner and an insurance agency in the Republic of Korea and (2) a letter from that agency in which it extends a "conditional offer" to employ the petitioner's trainees as permanent Sales Specialists. The Collaboration Agreement was executed on April 9, 2013 and the conditional-offer letter was signed on August 1, 2013. Aside from the conditional-offer letter, the record of proceeding does not document any concrete efforts to open an office of the petitioner in the Republic of Korea.

- Include underwriting training that "will cover the areas of business auto, garage, professional liability insurance, and excess or umbrella underwriting."

The opening page of the ITP document provides this general outline:

Course Topics:

- The U.S. Insurance Market, the Korean Insurance Market & Changes Brought About by the U.S. Korea Free Trade Agreement
- Concepts and Theory regarding Personal Insurance Lines Sold by [the petitioner]
- Practical Application of Insurance Policy Sales Using [the petitioner's technologies and software]
- Concepts and Theory regarding Commercial Insurance Lines Sold by [the petitioner]
- AU 65 Principles of Underwriting
- AU 62 Principles of Underwriting
- Insurance as a Business

Pages 2 through 16 of the ITP document comprise the "Course Syllabus," which outlines the 19-month program by one or two-week periods. Each increment is outlined by subject matter, location, instructor name, time, reading material (if applicable), and overview of the training. The excerpts below reflect the Syllabus's framework and detail:

Weeks 6-8: PERSONAL INSURANCE

LOCATION: Company Office, room 3

INSTRUCTOR: [redacted]

TIME: 9am to 5pm daily, with lunch 12 pm to 1 pm

READING: Selected excerpts from Personal Insurance by [redacted]

OVERVIEW: Personal insurance, including auto, homeowners, condo, renters and flood will be categorically defined. Trainees will learn what type of customer will be most inclined to purchase each line, as well as the type of customer our company has the most interest in underwriting. Focus will be placed on sales of additional lines, cost implications for bundling products, and discounts available for up-selling.

* * *

Weeks 14-15: HEALTH INSURANCE

LOCATION: Company Office, room 3

INSTRUCTOR: [redacted]

TIME: 9am to 5pm daily, with lunch 12 pm to 1 pm

READING: Selected excerpts from Global Marketplace for Private Health Insurance: Strength in Numbers, by Alexander Preker, Peter Zwefel, & Onno Schellekens

OVERVIEW: Introduction to the Korean National Health Insurance Program, the Korean National Health Insurance Act, and the generalized characteristics of health insurance in Asia, including coverages, costs, and system access. Engage trainees in discussion of single-payer system and roll of government in healthcare. Provide analysis of Affordable Healthcare for America Act as it compares to historical structure of health insurance in America, with focus on structural changes and necessary costs.

IV. ANALYSIS

A. Determinations favorable to the petitioner

Based upon the preponderance of the evidence before us on appeal, we shall withdraw several of the grounds which the Director used as independent bases for denying the petition.

1. Regarding the beneficiary's level of training and expertise in the insurance field

The totality of the record of proceeding as constituted on appeal does not indicate that the approval of the petition would violate the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(C) against a training program for a beneficiary who already possesses substantial training and expertise in the proposed field of training. The beneficiary's academic transcripts, which relate to a degree in finance and management, do not reflect any coursework directly related to the insurance business. Further, we are not persuaded that the beneficiary's J-1 employment with the petitioner invested the beneficiary *with substantial training and expertise* in the insurance business. Further, we find, in particular, that, as asserted by the petitioner, the Director misconstrued the beneficiary's bachelor's degree in finance and management as a "Bachelor of Finance and Insurance Degree." Also, the evidence does not support the Director's finding that the proposed training program "does not include skill development and training" beyond that which the beneficiary had already attained by completing her bachelor's degree and by her one year J-1 exchange visitor training with the petitioner.

2. Connection between the proposed training and a career abroad for the beneficiary

We also find that the totality of the information that the petitioner has presented about the insurance industry in the Republic of Korea and about the proposed training program is sufficient to (1) meet the requirement, set forth at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4), to describe the career abroad for which the training will prepare the beneficiary; and (2) to demonstrate that the training will benefit the beneficiary in pursuing a career outside the United States, as required at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4). Also, we specifically find that, as correctly noted by the petitioner on appeal, the requirement at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) that the petitioner demonstrate that "[t]he training will benefit the beneficiary in pursuing a career outside the United States" does not mean

that the petitioner has to demonstrate that the beneficiary has already secured a definite job in that career outside the United States.

3. Statement describing the type of training and supervision and the training program's structure

Aside from the fact that the Director's decision does not elucidate the factual basis for this basis of denial, we find that the ITP does meet the basic requirements of 8 C.F.R. § 214.2(h)(7)(ii)(B)(1), as it does describe the type of training and supervision to be given, and the structure of the training program.

B. Adverse determinations

1. Productive employment beyond what is incidental and necessary to the training

The provision at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) states that "the petitioner is *required to demonstrate* that . . . [t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training." (Emphasis added.)

At page 3 of its RFE response, where the petitioner addresses the Director's request for "the amount of hours to be spent in a forty-hour work week, in classroom training and on-the-job training," the petitioner provides several statements which we find raise the questions of (1) what specific "hands on" activities the beneficiary would perform during the ten percent of training time that the petitioner ascribes to "exclusively hands on employment," (2) at what specific points in the training program such "hands on" training would occur, and (3) ultimately, whether the specific "hands on" training – which has not yet been identified with any particularity - that training would include productive employment beyond what is necessary and incidental to the training.

We have taken into account all of the petitioner's assertions that the beneficiary would not engage in productive employment beyond what is necessary and incidental to the training. However, the regulation requires that the petitioner "demonstrate" (not merely attest) that such is the case. This the petitioner has not done.

Although productive employment is not prohibited under the H-3 program, "only minimal productive employment is permitted." 55 Fed. Reg. 2606, 2618 (Jan. 26, 1990).² The issue here is whether the beneficiary will engage in productive employment beyond that incidental and necessary to the training, which is expressly prohibited by 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(3) and 214.2(h)(7)(iii)(E).

² The legacy Immigration and Naturalization Service (INS) was responding to a comment submitted in response to a proposed regulation. The commenter had "stated that the standard for productive labor should be modified so that it can be realistically involved with the training, and the best way to receive training is to do hands on work." In response, the legacy INS affirmed that "[w]hen a training program is characterized as hands-on training [(as is primarily the case in the instant petition)], it is difficult to establish that the training is not principally productive employment," and that "only minimal productive employment is permitted." *Id.*

The two definitions of "incidental" in *Webster's New College Dictionary 573* (Third Edition, Hough Mifflin Harcourt 2008) are "1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature. . . ."

The letter from [REDACTED], Inc. (the website design and maintenance company operating the petitioner's website) does not resolve the credibility issue raised by the fact that - as noted in the RFE and in the Director's decision - the petitioner's website had listed its two H-3 trainees as "P&C Asst. Underwriters," thus suggesting that those two trainees were engaged in productive employment beyond that necessary and incidental to their H-3 training. We find that the [REDACTED] letter does not resolve the question, raised by the website information about the H-3 trainees, as to whether the petitioner was engaged in a practice of using H-3 trainees for productive employment beyond what is incidental and necessary to the H-3 training.

The relevant part of the [REDACTED] letter - that it had come to [REDACTED]'s attention that it had "mistakenly placed incorrect job titles under certain individuals on the company's directory - appears to be based upon the petitioner's assertion to [REDACTED] that [REDACTED] had committed the errors. [REDACTED]'s letter states that the claimed errors were based upon a miscommunication of oral instructions between the petitioner's "HR" and the [REDACTED] web team, thus indicating that [REDACTED] did not have any business records to confirm that there was in fact a miscommunication. Establishing that it was not engaging in a practice of using H-3 trainees for productive employment beyond that allowed by the H-3 regulations would require submission of objective documentary evidence, such as, for instance, human resources records, pay records, or other records kept in the regular course of the petitioner's business, that would reliably indicate that the two H-3 trainees were not used for productive employment not permitted by the H-3 regulations. 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).

In short, the petitioner has not demonstrated that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training. Accordingly, the appeal will be dismissed and the petition denied because the petitioner has not satisfied the requirement at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3).

2. Not demonstrating that the beneficiary would not be placed in a position in the normal operation of the petitioner's insurance business within the United States

To meet the petition-approval condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) a petitioner must demonstrate that "[t]he 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."

We note that the appeal does not address this particular basis of the Director's denial, and so does not identify specifically any erroneous conclusion of law or statement of fact by the Director with regard to this basis for denial. Consequently, we need not further address this basis of the denial, and,

because it is uncontested, we will not disturb this ground of the Director's decision. *Cf.* 8 C.F.R. § 103.3(a)(1)(v) (an appeal will be summarily dismissed if it does not identify specifically any erroneous conclusion of law or statement of fact by the Director). Nevertheless, we also find that the evidence of record, as expanded by the appeal, supports dismissing the appeal and denying the petition on this basis.

The evidence of record does not establish that the petitioner's claim that the beneficiary's 19 months of full-time presence at the petitioner's offices would be totally devoted to training in accordance with the ITP is credible. We find that while the ITP document lists a wide range of topics to be covered during 19 months of 9 a.m. to 5 p.m. training days, the training schedule provided by the petitioner does not show how the 8-hour training days would be expended. Further, we note that while the petitioner's RFE-response asserts that ten percent of the training would be "exclusively hands-on training," the petitioner neither identifies the particular content of specific increments of such training nor indicates specific junctures in the training schedule where such hands-on training would be provided. Thus, the level of information provided about how the beneficiary would spend her 19 months of full-time training days is not sufficient to demonstrate that the extent to which the beneficiary would in fact be engaged in legitimate H-3 training.

Also, we refer the petitioner to our earlier discussion of the website advertisement which suggested that the petitioner was engaged in a practice of using its H-3 trainees as part of its regular staff. As the petitioner has not resolved the trainee-use issue raised by the advertisement, it materially undermines the credibility of the petitioner's assertions that the beneficiary would not spend her 19 months of full-time presence at the petitioner's office in anything but the training program.

Thus, the appeal will be dismissed, and the petition denied, also because the petitioner did not carry its affirmative burden under the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) to "demonstrate" that "[t]he 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. Unavailability of training in the beneficiary's own country

As a condition for approval of a H-3 petition for an alien trainee, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner to "demonstrate" that the proposed training is not available in the beneficiary's own country.

Based upon our review of all of the record's evidence related to the petitioner's training program, we find that the petitioner has not met its burden under 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) to *demonstrate* that, in the words of the regulation, "[t]he proposed training is not available in the alien's own country." In reaching this conclusion, we have taken into account all of the information, explanations, and documentary evidence that the petitioner has presented to support its claim of training unavailability.

On appeal, the petitioner asserts that, through its training program, the beneficiary will be "exposed to the operational logistics of insurance as business" without providing credible evidence that such

exposure cannot be obtained by training provided by insurance-entities in the Republic of Korea – the business location which the petitioner identifies as the ultimate target of its training.

As we noted earlier, the petitioner's support letter filed with the Form I-129 asserted that the training program instructs H-3 trainees "in the company's proprietary methods, systems, technologies" so that they may adequately staff the opening of a South Korean branch of the petitioner. However, we find that neither the ITP document, the Syllabus, nor any other evidence of record (1) describes in any detail what such methods, systems, and technologies are, (2) establishes why they are "proprietary," or (3) demonstrates why training in essentially the same methods, systems, and technologies would not be available within the insurance industry in the Republic of Korea.

So, too, we note that, while the petitioner's support letter asserts that its training program allows trainees "to implement" its "practices and methods" to "create and sell insurance products in a new market," the evidence of record does not show either (1) how the petitioner's practices and methods are essentially different from those of Republic of Korea insurance agencies engaged in the same type of insurance business as the petitioner proposes to open in the Republic of Korea, or (2) why essentially the same training outcome as the petitioner is offering would not be available through training in the Republic of Korea. In the same vein, we note that, while the petitioner's RFE response claimed that its classroom instruction would teach "the basic structure of [the] underwriting procedure for multiple lines of insurance" and that the training program's "hypothetical/shadowing period" would show "firsthand how underwriters and brokers propose, sell, and write a variety of insurance policies" discussed in the classroom setting, the evidence of record does not demonstrate why such training would also not be available in the Republic of Korea.

Therefore the appeal must be dismissed also because the petitioner has not demonstrated that the proposed training is not available in the beneficiary's own country, as required by the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1).

4. Beyond the decision of the director:
Training program dealing in generalities

Since the identified bases for denial are dispositive of the petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the petitioner seeks again to employ the beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A) forbids approval of a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." As reflected in our earlier comments and findings regarding the training program, in our discussion of the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2), the information about the training schedule is limited to topics or other training aspects to be covered over one or two-week periods, with no attention to specific scheduling of particular types of training during those relatively long periods.

Consequently, the training program as described is sufficiently vague and indefinite as to be categorized as dealing in generalities with no fixed schedule. Consequently, the petitioner has tripped the regulatory wire at 8 C.F.R. § 214.2(h)(7)(iii)(A) against approval of H-3 petitions based upon such training programs. Thus, even if it were determined that the petitioner had overcome each of the Director's grounds for denying this petition (which it has not), the petition could still not be approved.

V. CONCLUSION AND ORDER

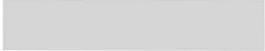
On appeal, we have withdrawn several grounds of the Director's grounds for denying this decision, namely, determinations (1) that approval of the petition would violate the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(C) against a training program for a beneficiary who already possesses substantial training and expertise in the proposed field of training; (2) that the petitioner did not meet the requirement, at 8 C.F.R. § 214.2(h)(7)(ii)(B)(4), to describe the career abroad for which the training will prepare the beneficiary; (3) that the petitioner did not demonstrate that the training will benefit the beneficiary in pursuing a career outside the United States, as required at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4); and (4) that the petitioner had not met the requirement at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) for a statement describing the type of training and supervision to be given, and the structure of the training program.

However, the appeal will be dismissed, and the petition will be denied, on each of several grounds which have not been overcome on appeal, namely, that the petitioner (1) did not meet the requirement at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) to demonstrate that that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; (2) did not satisfy the petition-approval condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) by demonstrating that "[t]he beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed"; and (3) did not satisfy the petition-approval condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requiring the petitioner to "demonstrate" that that the proposed training is not available in the beneficiary's own country.

Beyond the decision of the director, we find that approval of the petition is precluded by the regulation at regulation at 8 C.F.R. § 214.2(h)(7)(iii)(A), which forbids approval of a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation."

Consequently, the appeal will be dismissed and the petition will be denied.

We may deny an application or petition that does not comply with the technical requirements of the law 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 we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

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.³ 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 dismissed. The petition is denied.

³ As each of these grounds independently precludes approval of this petition, we will not address any of the additional deficiencies we have identified on appeal.