



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF E-T-, INC.

DATE: JAN. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a freight trucking company, seeks to train the Beneficiaries as a "Freight Trucking Business Trainee" under the H-3 nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(iii), 8 U.S.C. § 1101(a)(15)(H)(iii). The Director, California Service Center, denied the petition and affirmed that decision after considering the Petitioner's subsequent motion. The matter is now before us on appeal. The appeal will be dismissed.

#### I. ISSUES

The Director denied the petition, concluding that the Petitioner did not establish that the proposed training was not available in the Beneficiaries' home country. For the reasons discussed below we have determined that the evidence of record supports the Director's decision to deny the petition on the ground specified in her decision. Beyond the Director's decision, we shall also address several other aspects of the record which, although not specified by the Director, also preclude approval of the petition.

We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

#### II. THE LAW

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides H-3 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 are divided 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), specifies *four conditions* for approval of an H-3 trainee petition:

*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 *six* 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 *eight* proscribed deficiencies, any one of which 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;

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- (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. BACKGROUND

In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that it established its business in [REDACTED] employed 28 persons in the United States, and had an annual gross income of "6, 5MLN," and a net annual income of "\$142K." In its letter of support filed with the Form I-129, the Petitioner states that it has an optimistic outlook for the future and plans "to grow and expand our business connections both here in the U.S. as well as overseas, especially in the Eastern European region." The support letter describes the proposed training program as the Petitioner's "first step" towards expanding overseas. The letter also claims that "[n]o such program exists in Moldova."

The Petitioner's letter of support introduces the Beneficiaries' home country, Moldova, as follows:

Moldova is a new democracy with a territory of about 33,851 sq. km. The main public and private universities are located in the capital city of [REDACTED] There are a few private institutions of higher education that address some of the basic training in the field of transportation, but none specialize in the freight trucking business and there are no courses or university programs available that offer a combination of both administrative and fieldwork training. . . .

### IV. PROPOSED TRAINING PROGRAM

Before we address the issue of the unavailability of the proposed training, we will review what the record of proceedings provides about that training.

The Petitioner introduced its "Freight Truck Transportation Training Program" in a "Training Program" document (TP document) filed with the Form I-129, and later expanded in response to the Director's request for additional evidence (RFE).<sup>1</sup> That document describes the training plan as a "2-year long course covering all aspects of the freight trucking business," through classroom and on-the-job training. The Petitioner asserted that its training program is designed for highly disciplined and focused persons who "would like to pursue an innovative career in the freight trucking business in their native country." The TP document also states that the proposed training program is a "unique, hands-on" program that consists of four parts spread over two years as follows:

The first 6 months, the trainees will begin with a general introduction of [the]

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<sup>1</sup> We shall hereafter focus on the more comprehensive version of the training plan that was submitted in response to the RFE, and, unless otherwise stated, we will be referring to the documentation provided in the RFE response.

freight transportation business both nationally and globally in a classroom environment. During this time, the connection between [the] United States economy and freight globalization will also be covered.

The second period will be a 6-month mix of classroom and on-the-job training, which will be divided into two equal parts. The first part of 3 months the trainees will learn detailed freight and on-the-road safety regulations and precautions as well as truck anatomy and maintenance. The second part of 3 months will explore brokerage logistics, in-house business procedures and customer-business relations. During this time, the trainee will do one day a week on-the-job training.

The 3rd part of this Program will cover the study of product safety and maintenance, on the road product storage, truck-product correlation, and a detailed study of loading and unloading procedures. During this part, safety precautions and regulations in regards to loading and unloading will also be intensely covered. On-the-job training will stay at 1 day a week (Friday), during which trainees will have the opportunity to observe as well as participate in the loading/unloading procedures covered during classroom time.

The 4th and final part will be a 6 month period exploring the system and logistics behind freight trucking routes nationwide, as well as intensive training on time efficiency, deadline management, and delivery procedures. This 6 month period will have 3 days a week classroom training while on-the-job training will increase to 2 days a week (Thursday and Friday) due to the fact that the first 6 months offer no on-the-job training. See above.

The schedule section of the TP document provides the following information about the timetable and content of the classes that would comprise the Beneficiaries' first year of training:

**I. Months 1-6** (No on-the-job training provided this period)

<u>Period</u>	<u>Days/Hours</u>	<u>Class Description</u>
Months 1-3	Mon-Friday 9:00am-11:30am	General Transportation Intro
	1:00pm-3:30pm	Freight Transportation Intro
Months 4-6	Mon-Friday 9:00am-11:30am	Global Freight Logistics & Operations
	1:00pm-3:30pm	Freight Operations in the Global Economy

**II. Months 7-12** (on-the-job training will not overpass 25% of total training)

<u>Period</u>	<u>Days/Hours</u>	<u>Class Description</u>
Months 7-9	Mon-Thurs 9:00am-10:30am	On-the-road Safety
	11:00am-12:30pm	Freight Trucking Safety Regulations
	1:30am-4:00pm	Truck Anatomy and Maintenance
	Friday 10:00am-4:30pm	<u>On-the-job training</u>
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Months 10-12	Mon-Thurs 9:00am-11:00am	Freight Trucking Business Procedures
	11:30am-1:30pm	Freight Brokerage Logistics
	2:30pm-4:30pm	Freight Industry Customer-Business Relations
	Friday 10:00am-4:30pm	<u>On-the-job Training</u> (office)
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The TP document's schedule section provides the following information about the timetable and content of the classes that would comprise the Beneficiaries' second year of training:

**III. Months 1-6** (on-the-job training will not overpass 25% of total training)

<u>Days/Hours</u>	<u>Class Description</u>
Mon-Thurs 9:00am-10:30am	Truck-Product Correlation
11:00am-12:30pm	On-the-road Product Storage and Maintenance
1:00pm-3:00pm	Strategic Product Loading and Unloading
4:00pm-5:30pm	Loading/Unloading Safety Procedures and Regulations
Friday 9:00am-4:30pm	<u>On-the-Job Training</u> : Loading and Unloading

**IV. Months 7-12** (Extra day of on-the-job training compensates for lack of on-the-job training in Part I. Total on-the-job training will not overpass 25%)

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<u>Days/Hours</u>	<u>Class Description</u>
Mon-Wed 9:00am-12:30am [sic]	Nationwide Truck Routing Study & Logistics
1:30pm-4:30 pm	Deadline/Time Efficiency & Delivery Procedures
Thurs-Fri 9:00am-4:30am [sic]	<u>On-the-Job Training</u> Truck Routing/Delivery

The "Course Descriptions" section of the TP document provides a general overview of training to be provided in each of the training blocks that the Petitioner presents as constituting the proposed training. This section references nine books, which are referred to as "textbooks." The context in which each of the books is referenced indicates that they are to be used for instruction material for the training topics to which they relate. We provide the following excerpt (relating to part of the first year of the proposed training program) as fairly representative of the type of information that the "Course Descriptions" segment of the training plan presents:

**Global Freight Logistics and Operations (Months 4-6)**

The Global Freight Logistics and Operations class will cover significant freight transportation aspects in the global environment. Trainees will explore global operations related to water, air, and road commercial motor carriers. Trainees will study a large variety of models and explore text in relation to, among many others, freight supply-chain risk analysis, global policy implications based in freight transport, capacity utilization of vehicles for road freight transportation, global freight transport pricing models, urban freight distribution, tactical and operational city logistics, the emergence of spatiotemporal structures in commodity transport, and global vehicle flow analysis in the freight industry. Trainees will also have the opportunity to explore rail operations and [inter]operativity, inland waterways, including waterway statistics, various environmental issues in the global freight industry, as well as the carriage of dangerous goods and the legislation behind it. Books for this course are [redacted] and [redacted] Instructor for this class is [name provided].

Because the "Course Descriptions" segment of the TP document indicates that the Petitioner's instructors would draw upon the referenced books to frame their training, we note that the record of proceedings does not indicate that those textbooks are unavailable in Moldova, whether through the Internet or otherwise. Furthermore, the Petitioner has not demonstrated the training content that it would actually draw from those books is not at least substantially conveyed through training available in Moldova. In addition, the record of proceedings does not include evidence from knowledgeable sources, such as freight trucking companies or industry associations in Moldova, which directly address the extent to which Moldova's freight trucking companies may have incorporated into their business practices, and trained their staff in, the concepts and principles

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contained in those books.

## V. ANALYSIS OF THE GROUND FOR DISMISSAL

The Director introduced the ground for dismissal by stating, “The issue to be discussed is whether you have established that the training is not available in the beneficiaries’ home country” and the decision ends with the Director concluding that “the petitioner has not met proposed training is not available in the beneficiaries’ home country.”

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) requires the Petitioner “to demonstrate” - not just attest - that the proposed training is not available in the beneficiaries’ own country, Moldova. This the Petitioner has not done.

### A. The Documents Addressing Conditions in Moldova

The Petitioner provided an array of documents addressing conditions in the Republic of Moldova, to support its contention that the proposed training is not available there. The array includes partial or complete copies of:

- An Inception Report jointly published on January 31, 2012, by the [REDACTED] and the Government of Moldova in support of the preparation of a transportation and logistics strategy for Moldova;
- A study entitled “Republic of Moldova Policy Priorities for Private Sector Development” produced by the [REDACTED] Sector Unit for Private and Financial Sector Development, Europe and Central Asia (ECSPF) in 2013.
- The Republic of Moldova’s approved “Transport and Logistics Strategy for 2013-2022” document, including an “Action Plan” outline for implementing the “Road Sector” 2013-2020 Transport and Logistics Strategy;
- A certified English translation of a Government of Moldova decision, Number 827, approving “Transport and Logistics Strategy for the years 2013-2022” and “the Terrestrial Transportation Infrastructure Strategy for the years 2008-2017,” which serves to establish the authenticity of that aforementioned Transport and Logistics Strategy document for 2013-2022.
- A section from the *Wikipedia* Internet site, entitled “Education in Moldova.”
- A wide variety of documents pertaining to many aspects of the freight trucking industry in the United States (such as day-to day responsibilities, safety concerns, safety measures, related federal regulations, and forms used in day-to-day freight trucking operations)

We shall now discuss why we find that the aforementioned array of documents addressing conditions in the Republic of Moldova has little probative value towards demonstrating that the proposed training is not available in that country.

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1. The [REDACTED] Moldova Inception Report for the Preparation of a Transportation and Logistics Strategy

Contrary to the claim in the Petitioner's RFE reply, the content of this report does not indicate that the government of Moldova is looking to restructure its transportation infrastructure "[b]ecause of **unavailability** of proper training on the knowledge and skills associated with the Petitioner's proposed [training] program." We find, in particular, that neither the language quoted by the Petitioner from the document nor the remainder of the document identifies unavailability of training of the type proposed here as a cause of the transportation and logistics problems that the strategy aims to address.

2. The Study on Policy Priorities for Private Sector Development in the Republic of Moldova

Neither the Petitioner's quotations from this study nor the full content of that document supports the claim, stated in the Petitioner's RFE-reply letter, that there is "[n]o doubt that the proposed training is crucial for the [Republic of] Moldova's transition to a free market economy and the lack of such program and the knowledge and skills associated with it is well evidenced from the above comprehensive presentation." We find that the study did not specifically identify the absence of the Petitioner's type of training as an impediment to private sector development. We also find that the study did not address Moldova's freight-trucking industry in sufficient detail to justify the Petitioner's conclusion that its training program is essential to fill a material gap in training available in Moldova. We find no basis in the study for inferring - as it appears that the Petitioner would have us do - that Moldova's private-sector development priorities have been generated, at least in part, by an absence of the type of training that it would provide the Beneficiaries.

3. The Document on Moldova's Transport and Logistics Strategy for the Years 2013-2022

The Petitioner refers to this document at length in its "Additional Statement under 8 CFR sec. 214.2(h)(7)(ii)(B)(5)." We find that neither the Petitioner's quotations from the document nor the document's overall content articulates that Moldova lacks the type of training that the Petitioner asserts that it would provide. Furthermore, the Petitioner presents as facts its own, undocumented assessments of the Moldova transport industry, which, aside from their lack of corroboration, exceed the level of specificity, detail, and scope of the strategy document's observations. We also note that the report's table on "Transport Sector SWOT Analysis" specifies "Education and training levels in transport" as one of the Republic of Moldova's strengths.

We also find that the aforementioned "Action Plan" outline for implementing the "Road Sector" portion of the 2013-2020 transport and logistics strategy does not establish that the concepts, principles, and procedures that the Petitioner asserts its training program would convey are not provided in specific-to-Moldova training that is available in Moldova and of practical use there. We find in particular that the "Action Plan" as submitted into the record does not specifically identify any particular aspect of the Petitioner's proposed freight-truck transport training as unavailable in Moldova.

#### 4. The *Wikipedia* Article

This article is a relatively brief, generalized overview of the institutional levels of education in Moldova. It does not specifically address freight transport as an educational subject, nor does it address on-the-job or vocational training related to freight transport. As such, the article has little bearing upon the issue before us. Further, as there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* merits little evidentiary weight. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). See also the *Wikipedia* Internet site's disclaimer of any guarantee of the validity of its content, at [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer) (last accessed on Jan. 8, 2016).

#### B. Evidentiary Weight of the Statements by the Petitioner's President and Its Counsel

As part of our *de novo* review of the entire record of proceedings, we have considered and evaluated the evidentiary value of all of the assertions by the Petitioner's president and its counsel. However, we do not concur with the Petitioner's position that those statements should be accorded significant probative value because of the president and counsel's asserted standing as citizens of Moldova with authoritative knowledge on the matters that they address. Rather, we find that the record of proceeding lacks an evidentiary foundation sufficient for us to recognize their statements as inherently authoritative and, therefore, worthy of significant probative value. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Also, 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 Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

#### C. Concluding Analysis

First, it is important to note that in determining whether a petitioner has demonstrated that its proposed training is unavailable in a beneficiary's own country, we must evaluate the evidence in the light of what the pertinent regulations tell us about the nature of training that H-3 Trainee nonimmigrant classification is designed to foster. As reflected in the program-description requirements, conditions, and restrictions specified at 8 C.F.R. §§ 214.2(h)(7)(ii) and (h)(7)(iii), the only aspects of proposed training that are relevant to adjudication of an H-3 trainee petition are those shown to be likely to benefit the trainee in a career outside the United States. We have considered the entire body of evidence about the proposed training program. However, we have accorded little weight to aspects of the proposed training program that the evidence of record does not establish as essential to benefit the Beneficiaries in a career in the Republic of Moldova. In short, we are not persuaded by the fact that the Petitioner's training program focuses on materials focused outside Moldova.

In this regard, we note the training program's heavy incorporation of materials specific to freight trucking in the United States (such as literature, forms, road maps, trucking routes, regulations, protocols, and procedural guides, as well as contracts used in the Petitioner's own U.S. business operations and/or generally in the U.S. freight trucking industry). We will assume for the sake of argument that the particular collection of the U.S.-specific and "global" practice materials that the Petitioner identifies in its training program would not likely be available as a training package in the Republic of Moldova. We will likewise also assume that freight-truck-transport training in Moldova would not have the proposed training program's focus and emphasis upon the truck-freight-transport industry outside Moldova, that is, in the United States and "globally," that is, in countries other than the United States. However, such conclusions do not decide the unavailability-of-training issue.

We must inquire, further, as to whether the evidence demonstrates that only the U.S. and globally focused material of the proposed training program would likely provide the program's essential freight-trucking concepts, principles, and processes that would benefit the Beneficiaries in Moldova. However, upon consideration of the entire evidentiary record, we find that the evidence of record does not establish that the Petitioner's particular package of training materials is necessary to convey the basic concepts, principles, and processes at the core of the Petitioner's training program.

Next, for the purposes of analyzing the unavailability-of-training issue, we will accept the proposition that the proposed training program would benefit the Beneficiaries in pursuing a career outside the United States, as required by the H-3 regulations. However, we find that the evidence considered in its totality, with each piece weighed for its credibility and probative value, does not demonstrate that the substantive core of the Petitioner's training program is unavailable in the Beneficiaries' own country, Moldova. Specifically, the proposed training program's topics of general applicability in the freight-trucking-transport industry inside or outside Moldova - such as, freight and on-the-road safety; truck anatomy and maintenance; brokerage logistics; in-house business procedures; customer-business relations; product safety and maintenance; on-the-road product storage; truck-product correlation; time and deadline management and delivery procedures.<sup>2</sup>

It should also be noted that we glean from the record's documents on Moldova that Moldova has a well-established freight trucking industry. In this context, and given the facts that one of the documents mentions Moldova's training as a strength and that the Petitioner has not established the contrary, we find it likely that the Moldova freight trucking industry has developed suitable training. In addition, the record of proceedings does not include evidence from knowledgeable sources, such as freight trucking companies or industry associations in Moldova, to address the extent of training available in Moldova. In any event, the Petitioner has not met its burden under the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I) to demonstrate that the unavailability of the training in Moldova.

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<sup>2</sup> To assess what beneficial information that would likely benefit the Beneficiaries in pursuing a career outside the United States, we focused particularly upon the information presented in TP document's "Overview," training schedule, and "Course Descriptions."

For the reasons discussed above, we conclude that the Director's decision to deny the petition was correct. Accordingly, the appeal will be dismissed.

## VI. OTHER ASPECTS OF THE RECORD THAT PRECLUDE PETITION APPROVAL

Even if the Petitioner had met its burden to demonstrate that the proposed training was not available in Moldova, which is not the case, there are other aspects of the record of proceedings as currently constituted, which, although not addressed by the Director, nevertheless would preclude approval of the petition.

### A. The Evidence Does Not Satisfy the Condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3).

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires that the Petitioner "demonstrate" that "[t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training." The evidence of record has not satisfied this condition.

In its letter of support submitted with the Form I-129, the Petitioner stated that "[t]he tasks performed during on-the-job training will end up in part with an attribution as productive employment, which does not exceed 25% of the total training time." This comports with the parenthetical annotations in the TP document's schedule section that "on-the-job training will not overpass 25% of total training."

The record reflects that the Beneficiaries would be engaged in a significant amount of on-the-job-training that would involve productive employment (such as loading, unloading, and office work). However, while the Petitioner consistently asserts that any on-the-job work would be limited to what is essential to the training program's goals, the Petitioner does not provide sufficient details to demonstrate, rather than just attest, that, in the words of the regulations, the Beneficiaries "will not engage in productive in productive employment unless such employment is incidental and necessary to the training."

### B. Approval of the Petition Is Precluded by the Restriction at 8 C.F.R. § 214.2(h)(7)(iii)(A).

The restriction at 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approving a training program that "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation."

The proposed training plan and the allied documents identify many topics as subject matters and indicate that those topics would be covered over a period of two years. We find, however, that the timetable of topics deals in generalities and also does not establish any fixed or firmly set schedule for training on particular substantive issues encompassed by the specified topics. We refer the Petitioner to the training schedule included in its TP document.

Although they are designated to fill training slots across months of time, each type of class or on-the-job training session is described only once, and then only by its general subject matter, such as "On-

the-road Safety,” “Freight Trucking Business Procedures,” or “On-the-job Training (office).” The schedule is so generalized that the particular content of any class or training session is not conveyed. Accordingly, the schedule deals in generalities and does not evidence that that the Petitioner has yet fixed any specific course instruction or on-the-job-training regimen for the day-to-day progress of the training program.

In this regard, we note that the regulations do not support approval of a training program whose substantive content would be firmly set at some time after the petition’s filing. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See In re Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

#### VII. REQUEST FOR ORAL ARGUMENT

The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). Moreover, the written record of proceeding fully represents the facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.

#### VIII. CONCLUSION AND ORDER

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-T-, Inc.*, ID# 15001 (AAO Jan. 12, 2016)