



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

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

In Re: 23135907

Date: JAN. 17, 2023

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-3)

The Petitioner seeks to temporarily accept the Beneficiary as an “apprentice/trainee” under the H-3 nonimmigrant trainee program. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(iii), 8 U.S.C. § 1101(a)(15)(H)(iii). The H-3 program allows an individual or organization in the United States to invite certain foreign nationals to receive job-related training that is not available in their home country, for work that will ultimately be performed outside of the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied several regulatory requirements for approval of a petition for an H-3 trainee. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(H)(iii) of the Act describes an H-3 nonimmigrant as a foreign national “. . . who is coming temporarily to the United States as a trainee . . . in a training program that is not designed primarily to provide productive employment. . . .”

The regulations define the H-3 nonimmigrant at 8 C.F.R. § 214.2(h)(7)(i) as follows:

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, at 8 C.F.R. § 214.2(h)(7). They are:

- “Evidence required for petition involving alien trainee” - at 8 C.F.R. § 214.2(h)(7)(ii)(A) (“Conditions”) and (B) (“Description of training program”). The conditions subparagraph specifies four training attributes that the petitioner must demonstrate with regard to the proposed training program; the training-program description provisions specify six items of information that the petitioner must provide about the proposed training.
- “Restrictions on training programs for alien trainee” - at 8 C.F.R. § 214.2(h)(7)(iii). This section identifies six types of training programs that cannot be approved as a basis for an H-3 trainee petition.

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 [foreign national]’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 [foreign national]'s country and [(b)] why it is necessary for the [foreign national] 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 [foreign national] 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 [foreign national] 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 [foreign nationals] 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.

II. BACKGROUND

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner identified itself as a freight forwarding and logistics company. It claimed that it intends to employ the Beneficiary as an H-3 trainee on a full-time basis for a period of 24 months in an undefined position. In its supporting documentation, the Petitioner indicated that the purpose of its training program is "to expose our knowledge in U.S. export and customs and logistics fields and experience of U.S. unique styles and

techniques, machinery and latest technological advances that will greatly benefit the trainee as well [as] our company subsidiary where he will be employed upon completion of training.” The Petitioner explained that its in-house training program is designed “to adequately provide our trainees with implementing effective import/export and logistics management techniques and processes,” and “includes implementation of techniques for effective import/export procedures which include accounting, management, customs control, export control, trade regulations, import/export restrictions, licenses guidelines, etc.”

The record indicates that the Beneficiary, who has approximately six years of experience working in the field of customer service in Brazil, Australia, and Ireland, holds a diploma in business from the [redacted] Technical Institute in [redacted] Australia.

III. ANALYSIS

In denying the petition, the Director determined that the Petitioner had not sufficiently described the proposed training program as required under 8 C.F.R. § 214.2(h)(7)(ii)(B), concluding that the proposed training program did not meet the regulatory requirements because it dealt in generalities. The Director also determined that the Petitioner had not demonstrated that the training met the four training attributes outlined under 8 C.F.R. § 214.2(h)(7)(ii)(A), because the record did not demonstrate that the proposed training was unavailable in the Beneficiary’s home country, that the Beneficiary will not be placed in a position which is in the normal operation of the business, any productive employment engaged in by the Beneficiary would only be incidental and necessary to the training, and the training will benefit the Beneficiary in pursuing a career outside of the United States.

On appeal, the Petitioner asserts that the Director’s decision was erroneous, and submits a brief in support of this assertion. Upon review of the record in its entirety, we conclude that the Petitioner has not established eligibility for the requested benefit.

A. Nature of the Proposed 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,” and 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a training program which “[d]eals in generalities with no fixed schedule, objectives, or means of evaluation.”

The Petitioner initially stated that the Beneficiary’s training would impart “knowledge of U.S. export procedures, including customs and sales expertise involved in U.S. import/export industry, and the industry-specific operational and legal requirements involved in the import/export of products, as well as related business administrative support services.” The Petitioner claimed that the Beneficiary’s general training would consist of an introduction to specific operations and facilities, whereas industry-specific training would involve training in all aspects of import export management, logistics, freight forwarding, warehousing, and customs. The Petitioner also stated that the Beneficiary would rotate through various operational and administrative segments for supervised practical training,

According to the Petitioner’s training plan, the Beneficiary would receive 24 months of training for 40 hours per week during the hours of 9 a.m. and 5 p.m., Monday through Friday. The plan indicated

that the Beneficiary's training would be divided into multiple sections,¹ as follows: U.S. Export Procedures (6 months); U.S. Import & Customs Clearance Procedures and Compliance (6 months); Basic Accounting and Administrative Skills (3 months); Marketing and Management Skills (3 months); and Freight Forwarding Practices (6 months).

The Petitioner provided the following overview for each of the five training sections:

U.S. Export Procedures:

- a) Assist the export department administrative assistant in running weekly, monthly, and quarterly reports, sit next to administrative assistant and see how export systems operate and assist with implementation of licensing, consolidation, legalization, registration and other export procedures;
- b) Review reports that Export and Customs Manager sees on export and import trends, revenue, history and performance and prepares report as per assignment from manager on either trends by product, salesman, or profitability;
- c) Review profit and loss statements and meet with Export Manager to understand how performance management and employee supervision ties in to which aspects of which profit and loss statements;
- d) Work with Customs Manager to set up weekly agenda for staff meeting and outline issues that come up at weekly meetings that are relevant to Manager's report(s) to senior management;
- e) Attend weekly export and custom staff meeting and observe how Manager runs the meeting and implements agenda items;
- f) Review and report to the Export manager any issues and/or possible problems due to issues with time, etc.

U.S. Import & Customs Clearance Procedures and Compliance

- a) Review and report to Export manager to make sure that all export requirements are successfully met;
- b) Observe the clearance procedures for freight acceptance and review reports taken by the freight staff for freight procedures;
- c) Review that the processing and sorting procedures are followed at all times;
- d) Rate the time taken to charge and discharge freight;
- e) Observe the entire freight process and evaluate staff performance according to knowledge learned in in-class instruction.

Basic Accounting and Administrative Skills

- a) Assist payroll and accounting staff to run bi-weekly payroll, review reports that HR manager sees on vacation time taken or requested and salary payments

¹ Part three of the training plan indicates that "the training program is divided into three sections," but proceeds to identify the five sections listed above. Part four of the training plan states that "the sole responsibility of the Trainee is to complete the *four-phase* training program successfully. . . ." (emphasis added), and a four-phase training is again referenced in the training syllabus. No explanation for these discrepancies was provided.

made, sit next to payroll clerk in running reports and checks and see how systems operate and assist with implementation;

- b) Review resumes of candidates for marketing department jobs and
- c) Prepare analysis for HR manager as to types of questions that should be asked, issues about credentials, pluses and negatives for each candidate;
- d) Review, edit and update the performance evaluation forms for marketing staff by asking/learning what issues need to be evaluated, history of evaluation process at the company, issues in asking questions that will generate the best information in response;
- e) Review current personnel handbook and prepare comments to be communicated orally or in writing to HR manager about changes that might be made to add clarity;
- f) Review and understand company's policies and compliance with U.S. labor laws and prepare question and answer session explaining knowledge gained.

Marketing and Management Skills

- a) Assist management staff in transferring the merchandise and making sure that the quality of the product is kept intact and in good conditions;
- b) Review marketing procedures and evaluate the impact of marketing in an organization;
- c) Review reports that Export and Customs Manager sees on export and import marketing trend and history and prepares report as per assignment from manager on either trends by product, salesman, or profitability;
- d) Review destination points and make sure they are followed at a daily basis;
- e) Prepare analysis for inspection, inspection consulting, and security consulting;
- f) Assist staff in inspections for risk;
- g) Observe complete management daily procedures and adopt a safe manner in conducting the tasks required.

Freight Forwarding Skills

- a) Review and report to director regarding air charter and ocean freight routes;
- b) Aid the freight staff [to] correctly sort goods into classes;
- c) Practice and create sample internal documentation using EZ-Freight software;
- d) Strategize hypothetical client profitability based on real world factors and varying company financial parameters.

According to the training plan, the Beneficiary would receive direct instruction daily from 9 a.m. to 1 p.m., supervised practical training from 2 p.m. to 6 p.m.,² and would also attend selected trips and

² Contrary to this statement, the training plan overview indicated that the Beneficiary's training would end at 5 p.m. each day, and the Petitioner repeatedly states that the training will be implemented from Monday to Friday between 9 a.m. and 5 p.m. No explanation for this discrepancy was provided.

tours. The Petitioner further stated that 10% of the Beneficiary's period of supervised practical training, or 5% of his overall training, would be devoted to productive employment.

The Petitioner also provided a syllabus which indicated that the training will rely on exams, cases, individual written assignments, and a presentation, and that written assignments would serve as a "Coordinating Device." Regarding assessment, the syllabus indicated that trainees would be "evaluated in a scale of 1 to 10, 1 being the least progress and 10 being the most progress," and evaluation would be broken down into four levels, namely: reaction, learning, performance, and impact. The syllabus also listed the course material to be used for the Beneficiary's training.

The Director issued a request for evidence (RFE), noting that the Petitioner's initial description of the training was too general. Specifically, the Director noted that the description of the proposed training provided neither a meaningful account of the Beneficiary's day-to-day activities during the entire training period nor an adequate description of the complete training program and schedule, specifically noting that although the Petitioner provided a list of sub-topics to be covered in each training section, they were also too general. The Director noted that in addition to not providing specific information pertaining to the subject matter to be covered by the sub-topics of each training section, the Petitioner also did not provide the number of hours the Beneficiary would devote to each sub-topic, and further did not supplement the record with information regarding the method of instruction or material to be used in the classroom portion of training. The Director further noted that nature of the Beneficiary's evaluation and supervision remained unclear. Accordingly, the Director requested that the Petitioner provide additional evidence such as copies of lesson plans and training materials for this training program or previous training programs; copies of the Petitioner's standard trainee performance appraisal guidelines and sample appraisals from former students/trainees; a detailed account of the training program describing the classroom training, practical exercises, and on-the-job training; and pamphlets, brochures, website excerpts, or other printed material outlining the nature of the training.

In response, the Petitioner claimed that the training overview and syllabus previously submitted were sufficient to demonstrate the nature of the proposed training program, and asserted that parts three and four of the training plan, which provided the topics/sub-topics and daily time breakdowns discussed above, were sufficient. Regarding supervision and means of evaluation, the Petitioner asserted that part five of the training plan, which specified that the Beneficiary's activities as a trainee would be coordinated and/or supervised at all times by its director, [REDACTED] and that the Beneficiary would also be "rotated through company employees." According to the Petitioner, the company employed nine regular employees, and the Beneficiary would be trained by one person at a time while the remaining eight employees worked full-time in their respective positions.

In denying the petition, the Director determined that the Petitioner's RFE response had not overcome the deficiencies noted in the training program's description. Upon review, we agree with the Director's finding that the Petitioner's description of the training program does not satisfy the requirements of 8 C.F.R. § 214.2(h)(7)(ii)(B)(I) or 8 C.F.R. § 214.2(h)(7)(iii)(A). While the regulations do not require a petitioner to account for every minute, or even every hour, of a beneficiary's time, the plain language of the regulations requires a petitioner to sufficiently describe a training program's structure, the type of training, and the supervision to be given, and to also establish that the program does not deal in generalities. The description, therefore, must be meaningful. However, the Petitioner's description does not adequately convey the essential aspects of the program.

Preliminarily, we note numerous unresolved discrepancies regarding the nature of the proposed training program. First, the Petitioner interchangeably refers to the training program plan as a three-phase, four-phase, or five-phase program throughout the record. Although the Petitioner outlined five distinct sections of training in the training plan and syllabus, the repeated erroneous references to the number of training phases raises questions regarding the substantive nature of the training. Moreover, in contrast to the training plan, the syllabus assigns different durations to four of the five training sections. For example, the syllabus indicates that only five months, not six months as stated in the training plan, will be devoted to U.S. Export Procedures and U.S. Import & Customs Clearance Procedures and Compliance. Likewise, the syllabus allots only two months to Basic Accounting and Administrative Skills and Marketing and Management Skills, which the training plan indicated would each be delegated 3 months of training time. The six-month time allotment to Freight Forwarding training remained unchanged. Despite these alterations, the syllabus continues to refer to a 24-month training period, despite the fact that the time allotments set forth therein total only 20 months. In addition, although the Petitioner claimed the Beneficiary's training will be 40 hours per week, from 9 a.m. to 5 p.m. Monday through Friday, several parts of the record indicate that training begins at 8 a.m. and ends at 6 p.m. Finally, the training plan states that the Beneficiary's training will "at all times" be coordinated and/or supervised by the Petitioner's director, [REDACTED] but simultaneously states that the Beneficiary would be "rotated through company employees." The exact nature of the Beneficiary's instruction, evaluation, and supervision is unclear based on these inconsistent statements. It is incumbent upon the petitioner to resolve such inconsistencies by independent objective evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Regarding the method of instruction, the syllabus indicated the course would be divided into classroom training and supervised practical training. The Petitioner's description of the training listed five phases of training, but despite providing a general overview of each topic to be covered, no further information regarding these topics was submitted. The Petitioner did not specify the number of instructional hours/weeks that would be associated with each particular topic, and the manner in which instruction would be administered is unclear. Although additional evidence clarifying the structure of the training was requested in the RFE, the Petitioner declined to provide additional evidence, claiming that the training plan and syllabus submitted in support of the petition sufficiently outlined the objectives of the proposed training plan. The Petitioner did not articulate any details regarding the nature of the Beneficiary's classroom training beyond identifying the topics to be covered, and it did not supplement the record with lesson plans or documentation outlining the manner in which the instruction would be presented. While the record contains topic lists and a list of "course materials," the actual course materials were not submitted. The training overview lacked specific details regarding the manner in which the subject material would be presented or the manner in which the Beneficiary's work would be evaluated and appraised.

Moreover, the Petitioner did not discuss or provide details regarding the type of instruction the Beneficiary would receive, or his level of involvement, if any, in supervised practical training, which appears to consist of on-the-job training. This omission is critical, as some of the identified training phases are vaguely described. For example, the U.S. Export Procedures phase of training indicates that the Beneficiary will "attend weekly export & customs staff meeting and observe how Manager runs the meeting and implements agenda items." Absent further details or clarification, it is unclear exactly what the Beneficiary will do during and learning during several of these sessions. Moreover, although the Petitioner identified [REDACTED] its director, as the Beneficiary's trainer for each phase of

training, the training overview did not explain the manner in which [] would oversee or evaluate the Beneficiary's performance during each phase of training.

Upon review, we conclude that while the training topics identified by the Petitioner appear to be reasonably connected to the stated training objectives, the training goals are vague and broadly stated. The Petitioner has not identified a schedule with specificity, because although it claimed the Beneficiary will receive training for 40 hours per week, from 9 a.m. to 5 p.m. Monday through Friday, it inconsistently states the start times and end times for the Beneficiary's classroom training (i.e., 8 a.m. to 12 p.m.) and supervised practical training sessions (i.e. 2 p.m. to 6 p.m.), which overlap the stated timeframe for instruction. Additionally, the Petitioner's statements about the proposed training program lack content that is sufficiently detailed and specific to establish that the Beneficiary's training would be governed by a fixed schedule, already determined by specific time periods designated for a specific training, and also characterized by objectives or means of evaluation.

In addition to the inconsistencies regarding the training's structure and schedule, the means of evaluation are likewise unclear. For example, while the syllabus indicates that the Beneficiary will be evaluated through exams, cases, individual written assignments, a presentation, and written assignments, and makes reference to a grading scale of one to ten, no additional information regarding exams or assignments was submitted, and there is no similar means of evaluation identified for the supervised practical training phase. It is unclear who would administer the identified exams and assignments and evaluate his progress.

Moreover, the training plan indicated that the Beneficiary will be supervised "at all times" by Mr. [] but simultaneously states that he will be rotated through the company's nine employees. In addition to not explaining or clarifying the extent of [] role in the training, the level of involvement by the Petitioner's nine employees in the classroom and supervised practical training portions of the training is confusing. Given that at least ten individuals are identified as trainers for the Beneficiary, it is unclear why each instructor is not delegated to a designated portion of the training, such that we can ascertain who is responsible for the Beneficiary's training on a specific day or topic. It is unclear, therefore, how the Beneficiary's work will be evaluated as claimed by [] and the Petitioner's nine other employees.

Given the inconsistencies in the record regarding the nature of the training plan, the method of instruction, and the means of evaluation of the Beneficiary's progress, we conclude that the training program deals in generalities with no fixed schedule, objectives, or means of evaluation. For the above stated reasons, we find that the evidence of record satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(B)(I) nor 8 C.F.R. § 214.2(h)(7)(iii)(A) or (B).

B. Availability of the Proposed Training

The Director also determined that the Petitioner had not provided sufficient evidence to satisfy the condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(I), which states that the H-3 petitioner "is required to demonstrate" that "[t]he proposed training is not available in the alien's own country."

The Petitioner argues that the proposed training is unavailable in the Beneficiary's home country of Brazil, primarily because the focus of the training is on U.S. import/export techniques which are only

available in the United States. It further argues that “the exposure to U.S. techniques and processes is invaluable to the trainees in pursuing their career abroad,” and that U.S. business and sales techniques are a “unique process.” The Petitioner concludes by stating that the training offered to the Beneficiary is not unique to the Petitioner, but to the United States. This statement does not sufficiently demonstrate that the proposed training is not available in Brazil. The Petitioner’s blanket statement that the proposed training is not available in Brazil is not substantiated, and falls short of establishing that no public or private organizations or academic institutions in Brazil offer similar training to that currently offered to the Beneficiary.

While the Petitioner submitted letters from Brazilian companies engaged in the import/export and customs management industry contesting the availability of such training in Brazil, we find them insufficient. For example, one letter states that “Brazil does not have any educational/training curriculum for U.S. export and customs management,” and that “academic universities in Brazil only provide basic education of U.S. import/export terms and lack the advanced processes and newly developed operating systems which are essential in today’s business.” However, the letters do not specifically address the nature or availability of the training program, and neither the letters nor the Petitioner’s statement are accompanied by independent evidence to corroborate their claims. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

We acknowledge that there may not be a similar entity providing the same type of training in Brazil. The issue before us, however, is whether the Petitioner’s proposed training, which it claims consists of (1) U.S. export procedures, (2) U.S. import & customs clearance procedures and compliance, (3) basic accounting and administrative skills, (4) marketing and management skills, and (5) freight forwarding practices is available in Brazil. Although we acknowledge that a portion of the Beneficiary’s training will involve U.S. import/export practices, there is insufficient evidence to demonstrate, as noted by the Director, that such training could not be administered in Brazil. Finally, three of the five sections of the Petitioner’s proposed training refer to basic accounting and administrative skills, marketing and management skills, and freight forwarding practices that seem to be universally available.

Absent additional evidence to support these assertions, we conclude that the Petitioner has not demonstrated that “[t]he proposed training is not available in the alien’s own country,” as specified at 8 C.F.R. § 214.2(h)(1)(ii)(E).

C. Position in the Normal Operation of the Business

The provision at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) places upon the Petitioner an affirmative burden “to 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.”

In denying the petition, the Director determined that the Petitioner did not submit sufficient evidence to demonstrate that the Beneficiary would not be placed in its normal business operations. The Director noted that although it had requested additional information regarding the nature of the Petitioner’s normal business operations and an organizational chart for its company, the Petitioner did not submit the requested evidence in response to the RFE, and the absence of such evidence precluded

an examination of the Beneficiary's position within the Petitioner's operations. On appeal, the Petitioner asserts that the Director's determination was erroneous, and argues that the Director incorrectly determined that tasks performed by the Beneficiary, such as running reports and discharging freight, were incidental to the goals and purpose of the training and not performed in the normal operation of business.

Upon review, we concur with the Director's determination. First, the totality of the evidence does not provide a reliable, substantive account of how the Beneficiary would spend his training time. The training description provides discrepant hours in which the Beneficiary's training will be conducted and divides the proposed training into five phases; however, the varying accounts of the breakdown of time to be devoted to supervised practical training have not been clarified. Moreover, while the Petitioner provided an overview of topics to be covered and items to be executed in each phase of training, it did not clarify to what extent certain training topics or assignments overlapped or coincided with its normal business operations. For example, during the months devoted to the U.S. export procedures phase, the Petitioner stated that the Beneficiary would "review reports that Export and Customs Manager sees on export and import trends, revenue, history and performance and prepares report as per assignment from manager on either trends by product, salesman, or profitability." Also, the training plan indicates that during the accounting and administrative skills phase of training, the Beneficiary would "review resumes of candidates for marketing department jobs" and "assist payroll and accounting staff to run bi-weekly payroll." Therefore, it appears that several of the Beneficiary's tasks during training directly contribute to some extent to the normal operations undertaken each day by the Petitioner's staff and thus fall within the Petitioner's normal business operations.

The Petitioner noted that U.S. Citizenship and Immigration Services has approved other petitions that had been previously filed on behalf of other beneficiaries for the trainee position currently offered. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

The totality of the evidence does not provide a reliable, substantive account of how the Beneficiary would spend his training time. Although the training description divides the proposed training into five phases of varying length and the Petitioner's description specifies topics for each of the five phases, it does not identify specific subject matter by either days or weeks. In sum, as the record does not sufficiently show what the Beneficiary would actually be doing during his proposed training. It therefore cannot be concluded that he "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 set forth at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

D. Productive Employment

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.

On the Form I-129 petition, the Petitioner stated that approximately 50% of the training will be devoted to direct academic instruction, with the remaining amount devoted to supervised practical training. Of the supervised practical training, the Petitioner indicated that approximately 10% of that portion of training, or 5% of the Beneficiary's overall training, would involve productive employment. In denying the petition, the Director determined that the record contained insufficient evidence defining the exact nature of the training and what the portion of the Beneficiary's claimed productive employment would entail, thereby prohibiting a determination that he would not engage in productive employment.

Upon review, the record as constituted is insufficient to allow a determination regarding any productive employment associated with the proposed training. The Petitioner's statements, both in response to the RFE and again on appeal, confirm that the Beneficiary will engage in some productive employment during the supervised practical training portion of the training. Although the Petitioner asserts on appeal that the Beneficiary's productive employment is incidental and necessary to the training and that he will be under constant supervision, the training plan and syllabus indicate that the Beneficiary will independently perform numerous import/export and administrative tasks. To the extent that the Petitioner describes them, the activities said to comprise his supervised practical training generally do not establish that they are not also productive employment. The Petitioner affirmatively stated throughout the record that it is a freight forwarding and logistics company. Given that the Beneficiary will "prepare analysis for inspection, inspection consulting, and security consulting," "rate the time taken to charge and discharge freight," and "review profit and loss statements," it appears that the Beneficiary's work will in fact benefit the Petitioner's operations, and thus is not limited to what is essential to the training program's goals. Moreover, the Beneficiary's supervision and means of evaluation, as discussed previously, have not been clearly articulated. Although the Petitioner asserted in response to the RFE that the training program would entail only a small amount of productive employment, it does not provide sufficient details to demonstrate that the Beneficiary "will not engage in productive in productive employment unless such employment is incidental and necessary to the training."

The Petitioner again refers to the prior approvals of petitions for other beneficiaries as evidence that this criterion has been satisfied. Again, we are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

For the reasons set forth above, the Petitioner had not satisfied the condition for approval at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3).

E. Career Abroad

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires that the evidence of record demonstrate that the training will benefit the Beneficiary in pursuing a career outside the United States; and 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the Petitioner to describe the career abroad for which the training will prepare the Beneficiary.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) requires that the evidence of record demonstrate that the training will benefit the Beneficiary in pursuing a career outside the United States; and 8 C.F.R.

§ 214.2(h)(7)(ii)(B)(4) requires the Petitioner to describe the career abroad for which the training will prepare the Beneficiary. We find the evidence of record sufficient to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(4) and 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) by a preponderance of the evidence, and the Director's contrary determination is hereby withdrawn.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.