

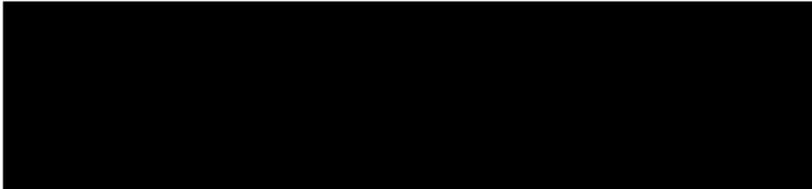
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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



D5

DATE: OFFICE: CALIFORNIA SERVICE CENTER

**JUN 07 2012**  
IN RE:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (the director) denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and affirmed in part. The appeal will be dismissed.

The petitioner represented itself on the Form I-129 as a certified public accounting firm with three employees. It seeks to employ the beneficiary as a trainee for a period of eight months pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii). The director denied the petition on the basis of his determination that the petitioner failed to establish: (1) that similar training is unavailable in the beneficiary's home country; and (2) that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find the petitioner has overcome the director's finding that similar training is unavailable in the beneficiary's home country. However, it has not overcome the director's finding that it failed to demonstrate it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. Beyond the decision of the director, we find additionally that the petitioner failed to: (1) demonstrate that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) set forth the proportion of time that will be devoted to productive employment; and (3) show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

*Applicable Law*

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

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

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

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

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

(ii) *Evidence required for petition involving alien trainee—*

(A) *Conditions.* The petitioner is required to demonstrate that:

- (1) The proposed training is not available in the alien's own country;
- (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
- (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
- (4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

- (1) Describes the type of training and supervision to be given, and the structure of the training program;
- (2) Sets forth the proportion of time that will be devoted to productive employment;
- (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
- (4) Describes the career abroad for which the training will prepare the alien;
- (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
- (6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- (B) Is incompatible with the nature of the petitioner's business or enterprise;
- (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
- (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
- (E) Will result in productive employment beyond that which is incidental and necessary to the training;
- (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
- (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

*The Proposed Training Program*

In its November 15, 2011 letter of support, the petitioner stated that it was established in May 2011 by its corporate parent, a British firm of chartered accountants. According to the petitioner, the purpose of this expansion was to assist clients of the parent who are expanding and/or relocating to the United States. The petitioner explained that by virtue of having personnel in both countries the parent will be able to provide advice and services regarding American tax law while also addressing tax issues that arise under British law.

The petitioner claimed that its proposed training program is designed to expose the beneficiary, who currently works in England for the corporate parent, to the individual and business taxation systems of the United States so that he may learn about the interaction and interplay between the American and British tax systems and utilize that knowledge upon his return to England and continued employment with the company.

In the training program materials attached to its January 12, 2012 letter that was provided in response to the RFE, the petitioner divided its proposed training program into eight blocks of time. The first block of time would last two weeks, and the petitioner estimated that during this time the beneficiary would spend 12 hours per week on "practical application." The petitioner claimed the beneficiary would learn the following "theoretical concepts" regarding various accounting methods: cash versus accrual method of accounting; timing of income recognition; timing of deductions; and accounting for

inventories. With regard to the specific training to be provided, the petitioner stated that the beneficiary would learn about the different types of U.S. entities; receive an overview of U.S. corporate and individual taxes; learn about the sales taxes and value added taxes; “nexus and permanent establishment”; attend client meetings; meet with U.S. bankers and attorneys with his trainer; and attend networking events.

The second block of time would also last two weeks, and the petitioner estimated that during this time the beneficiary would spend 18 hours per week on “practical application.” The petitioner claimed the beneficiary would learn the following “theoretical concepts” regarding the taxation of partnerships: partnership incorporation and liquidation taxation; partnership taxable income and accounting methods; transactions between partners and partnership; and section 754 step-up adjustments. With regard to the specific training to be provided, the petitioner stated that the beneficiary would learn how to prepare tax returns; attend client meetings; meet with U.S. bankers and attorneys with his trainer; and attend networking events.

The third block of time would last four weeks, and the petitioner estimated that during this time the beneficiary would spend 22 hours per week on “practical application.” The petitioner claimed the beneficiary would learn about the following “theoretical concepts” regarding individual taxation: calculation of adjusted gross income; itemized deductions versus standard deductions; limitations on itemized deductions; and the alternative minimum tax. With regard to the specific training to be provided, the petitioner stated that the beneficiary would learn how to prepare tax returns using tax compliance software; meet with clients to obtain information necessary for the completion of tax forms; prepare requests for tax filing extensions; attend client meetings; meet with U.S. bankers and attorneys with his trainer; and attend networking events.

The fourth block of time would also last four weeks, and the petitioner estimated that during this time the beneficiary would spend 22 hours per week on “practical application.” The petitioner claimed the beneficiary would learn the following “theoretical concepts” regarding the taxation of “c” corporations: section 351 incorporation; dividend distributions versus redemptions; earnings and profits; net operating losses; and liquidation. With regard to the specific training to be provided, the petitioner stated that the beneficiary would assist the petitioner in the preparation of tax returns for clients who had sought extension of the filing deadline; examine the differing outcomes resulting from capital outlays and gains and losses; attend client meetings; meet with U.S. bankers and attorneys with his trainer; and attend networking events.

The fifth block of time would last 14 weeks, and the petitioner claimed there would be no “practical application” during this period of time. According to the petitioner, during this period of time the beneficiary would return to the United Kingdom for 14 weeks and provide tax services to British and American clients; study and take both the advanced diploma in international tax examination (also known as “CIOT ADIT”) and the “Paper III,” which is an overview of the American tax system; and attend networking events. The beneficiary would return to the United States after completing this 14-week component of the training program.

The sixth block of time would last four weeks, and the petitioner estimated that during this time the beneficiary would spend 30 hours per week on “practical application.” The petitioner claimed the

beneficiary would learn the following “theoretical concepts” regarding basic U.S. international individual taxation: foreign earned income exclusion; housing allowances; substantial presence and the green card residency test; and treaties relating to income taxation. With regard to the specific training to be provided, the petitioner stated that the beneficiary would continue preparing U.S. corporate and individual tax returns whose filing deadlines were extended; receive exposure to topics of increasing complexity; receive exposure to corporate tax filings; and learn to issue-spot and strategize.

The seventh block of time would also last four weeks, and the petitioner estimated that during this time the beneficiary would spend 30 hours per week on “practical application.” The petitioner claimed the beneficiary would learn the following “theoretical concepts” regarding basic U.S. international individual taxation: branches versus subsidiaries; subpart F concepts; transfer pricing; sourcing of income and deductions; and the foreign tax credit. With regard to the specific training to be provided, the petitioner stated that the beneficiary would continue preparing U.S. corporate and individual tax returns whose filing deadlines were extended; learn how to report wages, interest income, dividend income, capital gains and losses, and K-1 income; and learn how to calculate basic book to tax differences.

The eighth block of time would last three weeks, and the petitioner estimated that during this time the beneficiary would spend 30 hours per week on “practical application.” The petitioner claimed the beneficiary would learn the following “theoretical concepts” regarding the interaction between the American and British tax systems: investment in American companies by British nationals; British remittance basis taxation versus U.S. citizenship basis; and relief provided by income tax treaties. With regard to the specific training to be provided, the petitioner stated that the beneficiary would continue preparing U.S. corporate and individual tax returns whose filing deadlines were extended; learn how to report wages, interest income, dividend income, capital gains and losses, and K-1 income; and learn how to calculate basic book to tax differences.

The petitioner identified Rob Whittall as the individual who would supervise the beneficiary throughout the entire period of the proposed training.

#### *Unavailability of Similar Training in the Beneficiary’s Home Country*

The proposed training program satisfies 8 C.F.R. § 214.2(h)(7)(ii)(A)(I), which forbids approval of a petition when the petitioner fails to establish that similar training is unavailable in England, the beneficiary’s home country. The petitioner stated in its January 12, 2012 letter that similar training in United States tax law is unavailable in England and, furthermore, that the proposed training program is designed to assist the beneficiary in better serving the petitioner’s unique clients and their needs. It also claimed that the proposed training program would equip the beneficiary to attract clients to the petitioner’s practice. In addition to this testimony by the petitioner, counsel submitted below information from the British Universities and Colleges Admission Service, which identifies the British colleges and universities offering accounting programs, and course offerings from those institutions, which indicate that none of them offer training in United States tax law. On appeal, counsel submits letters from British college professors who attest that, to their knowledge, similar training is unavailable in the United Kingdom.

The claims and evidence submitted by the petitioner below and the evidence and arguments submitted by counsel on appeal are reasonable, and when considered in the aggregate they establish that similar training in tax law is unavailable in the United Kingdom.

The petitioner has established that similar training is unavailable in the beneficiary's home country, as required by 8 C.F.R. § 214.2(h)(7)(ii)(A)(1), and the director's contrary determination is hereby withdrawn.

*Physical Plant and Sufficiently Trained Manpower to Provide the Training Specified in the Petition*

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) requires the petitioner to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. In making her determination that the petitioner failed to satisfy this criterion the director highlighted the fact that although she requested photographs and a floor plan of the proposed training facility in her RFE, the petitioner did not comply and instead submitted a receipt indicating it had purchased a desk, a chair, a computer, electronic equipment, and study materials. In her decision denying the petition the director also questioned how, given that it employs only three individuals, the petitioner would be able to both conduct business and provide the training specified in the petition throughout the duration of the proposed training program.

On appeal, counsel emphasizes that the petitioner is a small company providing tax advice and that it is not a manufacturing company. With regard to the director's questioning of how the petitioner will be able to conduct its business while providing the proposed training program, counsel states that the beneficiary would not be "simply sitting in a classroom with textbooks" but that he would rather "observe the business at work in a manner in which to receive hands-on practical training."

Counsel's arguments made on appeal are not convincing. First, the petitioner has still not satisfied the director's December 14, 2011 RFE. The director specifically requested a copy of a floor plan of the petitioner's training facility to include all classrooms and on-the-job training locations as well as color photographs of the petitioner's training facilities, and the petitioner has now twice declined to provide the requested documentation with no explanation. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this reason alone, the petition must be denied on this ground. Furthermore, as the receipt submitted by the petitioner in response to the RFE for the purchase of a chair, desk, and other office supplies was dated January 2, 2012, a date subsequent to the RFE, it is not clear the petitioner would have purchased these items had the RFE not been issued. Regardless, the petitioner did not own these items as of the date the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1).

The evidence submitted below and counsel's assertions made on appeal fail to establish that the petitioner has the physical plant to provide the training specified. The document entitled "2012 Business Plan" (Business Plan) submitted in response to the director's RFE stated that the petitioner's business operations were at that time being run from Rob Whittall's residence, and that it "cannot see the benefit of having any physical offices at the moment." The record contains no evidence regarding Mr. Whittall's residence, which is where the proposed training would apparently

occur, and despite being afforded the opportunity to cure this deficiency by the director's RFE, the petitioner opted not to submit the requested evidence. As such, the record as currently constituted contains little evidence regarding the petitioner's physical premises and it has consequently failed to establish that it possesses the physical plant to provide the training specified in the petition.

Nor has the petitioner established it possesses sufficiently trained manpower to provide the training specified in the petition. The petitioner provided a breakdown of the time the beneficiary would spend on "practical application" during each of the eight blocks of time described in the training plan summary it submitted in response to the director's RFE. For example, during the first block of time the petitioner estimated that the beneficiary would spend 12 hours each week on such "practical application," which indicates he would spend 28 hours per week in classroom instruction or some other type of supervised instructions during that time. Following that line of reasoning, we extrapolate the following:

<i>Block of Time</i>	<i>Length of Training Block</i>	<i>Estimated Number of Hours that the Beneficiary Would Spend in Classroom Instruction</i>
First	Two Weeks	28 hours per week
Second	Two Weeks	22 hours per week
Third	Four Weeks	18 hours per week
Fourth	Four Weeks	18 hours per week
Sixth <sup>1</sup>	Four Weeks	10 hours per week
Seventh	Four Weeks	10 hours per week
Eighth	Three Weeks	10 hours per week

The petitioner stated on the Form I-129 that it has three employees, and the Business Plan indicates all of them may be subcontractors working in their own homes except for [REDACTED]. As such, the record indicates that [REDACTED], the employee identified as the trainer, and the beneficiary would be the only two individuals working at the petitioner's place of business, which is also [REDACTED] home, during the portion of the training program which would take place in the United States. The director determined properly that the record does not clearly establish how [REDACTED] will be able to attend to his other responsibilities while also spending such a large percentage of his time providing classroom instruction to the beneficiary. On appeal, counsel claims that the beneficiary "will be actively participating in [the petitioner's] core business, not simply sitting in a classroom." However, counsel's apparent assertion that the beneficiary would spend all of his time in practical training is not supported by the record, as the training program materials as summarized above establish that the beneficiary would be spending many hours each week outside of the "practical application" described by the petitioner. The petitioner has failed to explain how [REDACTED] would be able to perform his regular job duties while also training the beneficiary and in particular has failed to explain how he would supervise the beneficiary not only during the periods of "practical application" but in particular

<sup>1</sup> The petitioner stated that during the fifth block of time the beneficiary would return to the United Kingdom to work for the corporate parent. We do not question the petitioner's ability to supervise the beneficiary during that period of time.

during the periods of classroom instruction falling outside the portions of such “practical application.” The petitioner has failed to establish that it has sufficiently trained manpower to provide the training specified in the petition.

The petitioner has failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition as required by 8 C.F.R. § 214.2(h)(7)(iii)(G) and this petition must therefore remain denied.

*Generalities with no Fixed Schedule, Objectives, or Means of Evaluation*

Beyond the decision of the director, we find additionally that the petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A), which forbids approval of a training program dealing in generalities with no fixed schedules, objectives, or means of evaluation. The petitioner failed to adequately describe any means for evaluating the beneficiary’s progress, which alone mandates denial of the petition under 8 C.F.R. § 214.2(h)(7)(iii)(A). Furthermore, the petitioner has described its proposed training program in very general terms. For example, there is very little discussion of what the beneficiary would actually be doing on a day-to-day basis during much of the training program. For example, the first, second, third, and fourth training blocks would collectively last 12 weeks, and the petitioner’s explanation of what the beneficiary would be doing during each training block consists of brief “theoretical concepts” presented in bullet-point fashion. The “description of training provided,” which the petitioner also presents in similar bullet-pointed fashion, consists primarily of subject topics rather than an explanation of what the beneficiary would actually be doing. The petitioner’s entire description of the fifth training block, which would last 14 weeks, consists of four brief sentences. While the beneficiary is not required to provide an exhaustive plan accounting for each minute of the beneficiary’s time, the petitioner here has failed to provide a meaningful description, beyond generalities, of what the beneficiary would actually be doing on a daily basis while participating in the training program. The petitioner has not satisfied 8 C.F.R. § 214.2(h)(7)(iii)(A) and the petition must be denied for this additional reason.

*Submission of a Statement which Sets Forth the Proportion of Time that will be Devoted to Productive Employment and which Shows the Number of Hours that will be Spent, Respectively, in Classroom Instruction and in On-the-Job Training*

Beyond the decision of the director, we find additionally that the petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(2) and (3). Although the training program materials submitted below provided a certain number of “estimated practical application hours” for each training block of the proposed training program, the petitioner did not specifically state that these would be the only hours spent in productive employment. Such lack of clarity is not permissible and does not satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(2). In similar fashion, the petitioner has failed to satisfy 8 C.F.R. §§ 214.2(h)(7)(ii)(B)(3) because it did not explicitly state the number of hours the beneficiary would spend in classroom instruction as required by that regulation. For these additional reasons, the petition may not be approved.

*Conclusion*

On appeal the petitioner has overcome the director's finding that the petitioner failed to establish that similar training is unavailable in the beneficiary's home country. However, the petitioner has not overcome the director's finding that it failed to establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition. Beyond the decision of the director, the petitioner has also failed to: (1) demonstrate that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) set forth the proportion of time that will be devoted to productive employment; and (3) show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.<sup>2</sup> Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(iii) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish its eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). It has not met that burden and the appeal will be dismissed.

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

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