

PUBLIC COPY

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



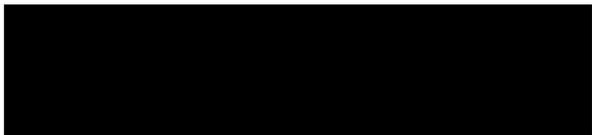
D5

DATE: JUN 13 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:



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 The director's decision will be withdrawn in part and affirmed in part.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 petition will remain denied.

The petitioner described itself on the Form I-129 as the "leading charity for the entertainment industry" and claimed to have 41 employees and gross annual income of \$190 million. It seeks to employ the beneficiary as a "trainee/production intern" for a period of 18 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 her determination that the petitioner failed to: (1) establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) describe the training program's structure, the type of training and supervision to be given; (3) set forth the proportion of time that will be devoted to productive employment; and (4) show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training.

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 it failed to set forth the proportion of time that will be devoted to productive employment. However, it has not overcome the director's determination that it failed to: (1) establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) describe the training program's structure, the type of training and supervision to be given; 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 the following:

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

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

- (2) As a participant in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

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 6, 2011 letter of support, the petitioner claimed it was created in 1942 "as the leading charity for the entertainment industry." According to the petitioner, it has raised "hundreds of millions of dollars" to support causes including health care, education, volunteerism, environmental protection, and veterans and their families. The petitioner explained that it supports these efforts by leveraging the assets of the film, television, and news industry, and stated that notable fundraising efforts have included "Stand Up for Cancer," "Hope for Haiti," "American Idol Gives Back," "Rise and Honor," and "iParticipate."

The petitioner explained that it has established a "charitable mission-oriented partnership" with the British Broadcasting Corporation (BBC) in order to create collaborative programs benefiting individuals and nonprofit organizations around the world. As an example of such collaboration, the petitioner cited its current effort to develop the first-ever "television roadblock" across all five major

British television networks to broadcast a fundraising program which will be a partnership between its [redacted] and [redacted]. According to the petitioner, the beneficiary will “be working on behalf of [the petitioner] at the BBC and in the UK to represent [the petitioner’s] interests on logistics” for such efforts, and that he would also “assist in working with [the] BBC to develop additional initiatives, particularly collaborative charitable programs that leverage the UK and U.S. television industry.”

In the training outline it submitted when it filed the petition, the petitioner stated that the beneficiary’s proposed training would be conducted through “intensive direct instruction and supervised practical training” forty hours each week. In its “detailed list of each element” of its proposed training program, the petitioner named ten such elements:

- Introduction to [the petitioner’s] production pipeline, personnel, and procedures;
- Fundraising and charitable training, conducted in a classroom setting;
- Stand Up to Cancer;
- Business and financial reporting;
- Developing joint venture partners and using the media to achieve goals;
- Accounting for national and international tax treatments;
- Securing top-flight talent and partners to perform in entertainment projects; and Event staging and production;
- Public service campaigns and volunteering;
- iParticipate website; and
- Building grants and funding.

In its response to that portion of the director’s December 12, 2011 request for additional evidence (RFE) directing it to describe the training program’s structure in more detail, the petitioner resubmitted the training outline it submitted when it filed the petition.

*Statement Describing the Structure of the Training Program and the Type of Training and Supervision To Be Given; Generalities With No Fixed Schedule, Objectives, or Means of Evaluation*

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the petitioner to submit a statement which describes “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) forbids approval of a training program which “[d]eals in generalities with no fixed schedule, objectives, or means of evaluation.” The director found the petitioner’s initial submission insufficient to satisfy these criteria and in her RFE requested, *inter alia*, that the petitioner describe in detail the proposed training program’s structure and the supervision that would be provided. The director also specifically requested that the petitioner provide a breakdown of the number of hours that would be spent in classroom instruction, on-the-job training, and in productive employment. The director further instructed the petitioner to provide the number of full-time trainers it employs and, if it employs no trainers, to specify whether the training duties of the individual who would be training the beneficiary would be collateral and to describe the work the trainer would normally be doing when not providing the training. The director also requested that the petitioner indicate exactly who would provide the classroom training and who would provide the on-

the-job training, describe the materials to be used in the classroom training, and explain how the beneficiary's performance would be evaluated.

In response to the director's request for a more detailed description of the proposed training program's structure, the petitioner resubmitted the initial outline of the training program which the director had found deficient. The petitioner did not provide a breakdown of the number of hours that would be spent in classroom instruction, on-the-job training, and in productive employment, either. Nor did the petitioner respond to the director's request for additional information regarding the beneficiary's supervision: it did not provide the number of full-time trainers it employs or, in the alternative, specify whether the training duties of the individual, or individuals, who would train the beneficiary would be collateral to their normal duties and describe the work they would normally be doing when not providing training. Nor did the petitioner respond to the director's specific request for the names of the individuals who would be providing the training. Nor did the petitioner describe the materials that would be used by the beneficiary during any periods of classroom instruction. 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). The petitioner's failure to address these issues raised by the director in her RFE alone mandates denial of the petition. However, even if such were not the case the petition would still be denied, as discussed below.

As the evidence of record does not make clear what the beneficiary would actually be doing while taking part in the petitioner's proposed training program, it satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) nor 8 C.F.R. § 214.2(h)(7)(iii)(A). The petitioner's description of what the beneficiary would actually be doing consists primarily of that section of the training program description entitled [REDACTED] which it submitted when it filed the petition and again in response to the director's RFE. However, despite the petitioner's claim that the description constitutes a "detailed list of each element," it does not adequately explain how the beneficiary would spend his time. None of the ten elements of the 18-month training program was described meaningfully. For example, the first element listed by the petitioner consists of an introduction to the petitioner's "production pipeline, personnel, and procedures." However, the petitioner did not explain how much time would be spent on this element, whether it would consist of classroom instruction, what types of training materials would be used, or who would provide the instruction, etc. The second element of the proposed training program is entitled "fundraising and charitable training" and, although the petitioner did specify that classroom instruction would be provided, it did not specify how much time the beneficiary would spend learning about these matters, it did not identify the individual or individuals who would conduct the classroom training, and it did not describe the training materials that would be used. The third, fourth, and ninth elements are entitled [REDACTED]<sup>1</sup> "Business and financial reporting," and "iParticipate," with no further elaboration. Again, no information was provided as to how long each element would last, whether they would consist of classroom instruction, the types of training materials to be used, or who would provide the instruction, etc. The petitioner's descriptions of the remaining

---

<sup>1</sup> The promotional materials submitted by the petitioner regarding its [REDACTED] fundraising effort relate to that fundraising program itself rather than to the proposed training program or the beneficiary's duties. While relevant to the petition, those materials do not explain what the beneficiary would actually be doing during that portion of the training program entitled [REDACTED].

portions of the training program contain similar deficiencies. Furthermore, the petitioner's statements in its letter of support made clear that at least some portion of the proposed training would occur in the United Kingdom. However, the evidence of record does not explain which portion, or portions, of the training program would take place in that country or how long they would last.

Nor has the petitioner adequately explained how the beneficiary would be evaluated. Although the petitioner submitted a document entitled "Employee Performance Assessment" in response to the RFE, this document is not tailored to the proposed training program in any way and instead appears to be a standard evaluation used for all of the petitioner's employees.

Although the petitioner is not required to provide an exhaustive plan accounting for each minute of the beneficiary's time, it has failed in this case 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.

Counsel's assertions made on appeal do not overcome this ground of the director's denial do not establish the petitioner's claim. The evidentiary deficiencies contained in the relevant evidence submitted below were set forth previously, and counsel's argument that it was sufficient to meet the petitioner's burden of proof is not persuasive. Although he references unpublished decisions in which he claims the AAO approved H-3 petitions containing similar fact patterns to the case at hand, counsel furnishes no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner has not adequately described the structure of its proposed training program or established that it does not deal in generalities or demonstrated that it has a fixed schedule. Nor has the petitioner adequately described the supervision that the beneficiary would be given or the means by which he would be evaluated. The petitioner has therefore satisfied neither 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) nor 8 C.F.R. § 214.2(h)(7)(iii)(A).

*Submission of a Statement Which Sets Forth the Proportion of Time that will be Devoted to Productive Employment*

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(2) requires the petitioner to submit a statement setting forth the proportion of time that will be devoted to productive employment. On appeal counsel clarifies that the beneficiary will perform no productive employment while taking part in the training program. As the record now satisfies 8 C.F.R. § 214.2(h)(7)(ii)(B)(2) this portion of the director's decision is hereby withdrawn.

*Submission of a Statement Which Shows the Number of Hours that will be Spent, Respectively, in Classroom Instruction and in On-the-Job Training*

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(3) specifically requires the petitioner to submit a statement which shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. Although the training program materials submitted below state that the beneficiary will participate in the training program for forty hours each week and indicate he would receive some classroom instruction, the petitioner failed to provide the specific number of hours that would be spent in classroom instruction versus other types of training and instruction. It has therefore failed to satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(3).

*Conclusion*

On appeal the petitioner has overcome the director's finding that it failed to set forth the proportion of time that will be devoted to productive employment. However, it has not overcome the director's determination that it failed to: (1) establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) describe the training program's structure, the type of training and supervision to be given; and (3) show the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. 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.