



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUN 26 2013** OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

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:

SELF-REPRESENTED

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.

Thank you,

*for* *Michael T. Kelly*  
Ron Rosenberg  
Acting 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 appeal will be summarily dismissed.

On the Form I-129 visa petition, the petitioner describes itself as a “new and used tooling manufacturer for grinding machines” established in 1998. In order to employ the beneficiary in what it designates as a sales trainee position, the petitioner seeks to classify him as a nonimmigrant trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The director denied the petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii), that is, on the basis of his finding that the petitioner failed to submit all required initial evidence when it filed this petition.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director’s decision denying the petition; and (3) the Form I-290B and supporting documentation.

The AAO will first discuss why the appeal is being summarily dismissed. For the petitioner’s information, the AAO will then explain why the director’s decision to deny the petition, on the basis specified in the denial decision, was correct.

As this is an H-3 petition, the director correctly focused upon the regulatory provisions at 8 C.F.R. § 214.2(h)(7). The director’s particular focus was upon the required-evidence provisions at sections 8 C.F.R. § 214.2(h)(7)(ii), which reads:

(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.

In the denial decision, the director cited and correctly applied the regulatory provision at 8 C.F.R. § 103.2(b)(8)(ii), which reads:

*Initial evidence.* If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

By check-marking Box A at Part 2 of the Form I-290B (“I am filing an appeal. My brief and/or additional evidence is attached.”), the petitioner elected to have the appeal decided upon the record of proceeding as now supplemented and expanded by the Form I-290B and the allied documents filed with it.

The petitioner’s only comment in the Form I-290B is the following statement entered by counsel at Part 3 (Basis for the Appeal or Motion): “Please see attached expanded backup documents of schedule and itinerary.”

The Form I-290B’s “attached expanded backup documents of schedule and itinerary” break down into two documents. The first document, which consists of two printed pages bears the heading “H-3 Classification – Explanation Sheet”; the second document, which consists of the three printed pages, bears the title “Detailed Description of the Structured Training Program,” and it includes a table outlining training to cover five days a week for five weeks.

It appears that the first document is submitted, at least partially, as an attempt to amend Section 4 at page 16 of the Form I-129. That page contains six questions (at items 1a through 1f, at Supplement H) for which the Form expressly requires entry of an explanation for every “Yes” entry. The AAO notes that the petition as filed contains “Yes” entries for the questions numbered 1c, 1d, and 1f, but that the petitioner had failed to provide the explanation that the Form required for each of those positive entries. The AAO finds that none of the statements in this “Explanation Sheet” document assert any error by the director in denying the petition.

The AAO also finds that the second document submitted on appeal - the “Detailed Description of the Structured Training Program” – also does not contain any statements that identify any specific error by the director. Rather, it appears that this document was submitted as an attempt to remedy the specific failure to provide initial evidence that the director noted in the decision denying the petition.

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The regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as neither the petitioner nor its counsel identify specifically any erroneous conclusion of law or statement of fact by the director in the decision to deny the petition, the appeal must be summarily dismissed.

Accordingly, the appeal is dismissed, and the petition is denied.

Although the summary dismissal is dispositive of this appeal, for the petitioner's benefit the AAO will also discuss why the director's decision was correct.

As correctly noted by the director, the petition was filed without initial evidence that is required by the provisions at 8 C.F.R. § 214.2(h)(7)(ii) (*Evidence required for petition involving alien trainee*). Also, the director was correct to deny the petition, on the regulatory bases cited, because the petitioner filed the petition without some initially required evidence. The regulation at 8 C.F.R. § 103.2(a)(b)(1), *Demonstrating eligibility*, states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

As also noted by the director, the regulation at 8 C.F.R. § 103.2(b)(1), *Demonstrating eligibility*, states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

Additionally, the director was not required to issue a request to the petitioner to provide the missing evidence, as the regulation at 8 C.F.R. § 103.2(b)(8)(ii), *Initial evidence*, states:

If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

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Further, there is no regulatory provision that allows a petitioner to overcome a petition's denial for failure to submit initially required evidence by submitting such evidence on appeal.

Additionally, the AAO notes that aside from the grounds for denial of the petition already discussed, the evidentiary content of the petition as filed would have failed to merit petition approval, as it failed to satisfy a number of H-3 requirements. As a partial list of deficiencies, the AAO notes that the petition, as filed, failed to: (1) demonstrate that similar training is unavailable in the beneficiary's home country; (2) demonstrate that the beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; (3) establish that the training program the training program does not deal in generalities with no fixed schedules, objectives, or means of evaluation; and (4) establish that it has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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