



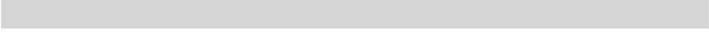
U.S. Citizenship
and Immigration
Services

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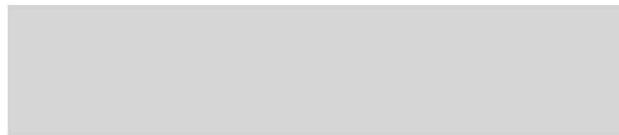
DATE: **AUG 05 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 The Director's decision will be withdrawn in part and affirmed in part.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.

I. BACKGROUND

On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner describes itself as a company engaged in the luxury and exotic car rental business. In order to employ the beneficiary in a position to which it assigns the job title "Trainee," for a period of 12 months, 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 finding that the evidence of record did not establish that (1) the proposed training is not available in the beneficiary's own country, and (2) the beneficiary will not engage in productive employment beyond that which is incidental and necessary to the H-3 training. The Director also noted that the petition did not include a statement describing the type of training and supervision to be given and the structure of the training program. The Director further identified two additional grounds for denial, namely, that a training program may not be approved which (1) deals with generalities with no fixed schedule, objectives, or means of evaluation, and (2) does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the Director's notice of intent to deny the petition (NOID); (3) the petitioner's response to the NOID; (4) the Director's decision denying the petition; and (5) the appeal, including the Form I-290B (Notice of Appeal or Motion), a brief, and supporting documents.

Upon review of the totality of the evidence in the record of proceeding, we will withdraw two of the independent grounds for denial that the Director specified in her decision, but will affirm the Director's other grounds for denial. Specifically, we withdraw the Director's determinations that the petition should be denied because (1) the evidence in the record does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified, and (2) the petition did not include a statement describing the type of training and supervision to be given and the structure of the training program. Consequently, the appeal will be dismissed, and the petition will be denied.

II. THE 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:

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

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

The regulations directly addressing the H-3 alien-trainee program appear at 8 C.F.R. § 214.2(h)(7). The definitional provision, at 8 C.F.R. § 214.2(h)(7)(i), states:

Alien trainee. The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use H-3 classification in order to receive any type of graduate medical education or training.

The particular rules governing petitions for H-3 trainees are divided into two major parts. They are:

- "Evidence required for petition involving alien trainee" - at 8 C.F.R. §§ 214.2(h)(7)(ii)(A) ("Conditions") and (h)(7)(ii)(B) ("Description of training program"); and
- "Restrictions on training programs for alien trainee" - at 8 C.F.R. § 214.2(h)(7)(iii).

Subparagraph (A) of the section on required evidence, at 8 C.F.R. § 214.2(h)(7)(ii), specifies *four conditions* for approval of an H-3 Trainee petition:

Conditions. The petitioner is required to demonstrate that:

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

Subparagraph (B) at 8 C.F.R. § 214.2(h)(7)(ii), specifies *six* aspects of the training program that must be described in the record. It states:

Description of training program. Each petition for a trainee must include a statement which:

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

The regulation at 8 C.F.R. § 214.2(h)(7)(iii), *Restrictions on training program for alien trainee*, provides a list of *eight* proscribed deficiencies, any one of which will preclude an H-3 training plan from being approved as a valid basis for an H-3 trainee petition. The regulation reads as follows:

Restrictions on training program for alien trainee. A training program may not be approved which:

- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- (B) Is incompatible with the nature of the petitioner's business or enterprise;
- (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
- (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
- (E) Will result in productive employment beyond that which is incidental and necessary to the training;

- (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
- (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

III. PROPOSED PROGRAM

In its letter of support filed with the Form I-129, petitioner stated that the purpose of its training program "is to export our knowledge and experience of U.S. unique styles and techniques that will greatly benefit the trainee as well as our company by which he will assist us in opening our first subsidiary in Brazil at the end of the training program."¹ The support letter also states the following about the nature of the training that it proposes for the beneficiary:

The training program will not only educate [the beneficiary] in the techniques necessary to be an effective luxury car rental specialist in specialist in a business but also how to apply the techniques learned. The techniques that the beneficiary will learn and be trained in our [redacted] location will be invaluable to our organization given our intention to open a subsidiary in Brazil and that we would like for him to fill this position once he finishes obtaining the training in our [redacted] office.

The support letter also explains that the proposed training would also equip the beneficiary him to sell the petitioner's luxury and exotic cars in Brazil after they have accumulated an amount of miles that would make them unattractive to its car-rental clientele.

The material filed with the Form I-129 also includes a "Training Plan" (TP) document that is divided into 14 separately-titled sections which describe the training that the petitioner proposes as the basis of the petition. While we have reviewed the entire document and considered all of the information included therein, we will here focus on the sections most pertaining to our decision.

The TP document states that the petitioner will provide the training on a daily basis, 40 hours per week from 9:00 a.m. to 6:00 p.m., for 12 months. It also identifies the title of the training as "Luxury Rental Car Management" and the field of training as "Luxury cars, rental car, management."

The TP document's section 3, Description of the Training to be Performed, reads as follows:

[The beneficiary] will acquire an in-depth theoretical and practical knowledge of U.S. Luxury Car Rental Management procedures, including expertise involved in the

¹ The record reflects that the beneficiary is a citizen of Brazil, the country of his birth.

international luxury car rental industry, and the industry-specific operational and legal requirements involved in the field, as well as related business administration support services. He will also rotate through various operational and administrative segments for supervised practical training. For a detailed description of each element of the training program, please refer to section 5 below. The training will be conducted through direct instruction and supervised practical training. Additionally, [the beneficiary] will be attending luxury/exotic rental interviews and shows. This will supplement the training program.

General training will include an introduction to specific operations and facilities. Industry-specific training will involve training in all aspects of luxury/exotic car rental.

In summary, the Luxury Car Rental Management Training will focus specifically on developing the specific professional skills required for assignment within the industry, and to assist us in opening our affiliate abroad. [The beneficiary] will be exposed to all aspects of the industry, as well as related business administrative support services.

The TP document's section 5, Outline of the Training Program Showing Periods of Each Phase of Training, provides the following three-section outline of the training program:

A. INTRODUCTION TO EFFECTIVE LUXURY CAR RENTAL 2 MONTHS

- Understanding the Exotic Rental Market
- Insurance
- Appeal to target audience based on
 - Impressions
 - Special occasions
 - Speed
 - Experience
- Competition analysis
- Corporate clients
- Customer needs/satisfaction

B. LUXURY CAR RENTAL MANAGEMENT TECHNIQUES 6 MONTHS

- Importance of Luxury car rental
- Types of Luxury car rentals[]
 - 1 hr
 - Half day
 - 1 day
- [T]ypes of cars offered in the U.S. compared to Brazil
- Importance [of] incorporating Luxury car rental into Brazil's market and regulations

- Luxury car rental Policies and Guidelines
- Luxury car rental Tools and Principles
- Car management and condition
- New products in the market
- Channeling markets
- Regulations
- Screening Process
- Mileage limit and overage
- Target audiences
- Research
- Media monitoring
- Luxury car rental Monetization
- Content consumption optimization
- PR boosting through social channels
- User behavior through paid media reach
- Luxury car rental Research
- Cross-region analytics through social networks
- Track, collect, analyze car rental data from (Data plotting tables, Trendspotting tables)
- Qualitative and Quantitative Analysis for Decision Making on social networks
- Luxury car rental paid promotion Financial Reporting and Analysis
- ROI – Measurement of Luxury car rental
- Industry-specific cases

C. LUXURY CAR RENTAL MANAGEMENT SOFTWARE 4 MONTHS

- [REDACTED] (Everything Luxury car related) [REDACTED]
- [REDACTED] (luxury car rental Monitoring) [REDACTED]
- [REDACTED] (Opinion Analysis through Luxury car rental) [REDACTED]
- [REDACTED] (Digital ads) [REDACTED]

The TP document's section 6, Amount of Academic Instruction, Time to Be Spent in "On the Job" Training and Amount of Productive Labor to Be Performed by Trainee, reads as follows:

Trainee will be utilized as follows:

9:00 a.m. to 1:00 p.m.	Direct instruction
2:00 p.m. to 6:00 p.m.	Supervised Practical Training

This schedule may be subject to change, as the trainee will also attend selected trips and

interviews. Accordingly, approximately 50% of the program will be devoted to direct academic instruction.

The Trainee will be engaged in [a] very limited amount of PRODUCTIVE employment incidental to the training program but only insofar as this is unavoidable in giving him practical training [in the] operations of our business. This incidental productive employment will be hands-on operation, and will constitute approximately 10% of the period of Supervised Practical Training, or 5% of the entire program.

The sole responsibility of the Trainee is to complete the three-phase training program successfully and thereby become eligible for assignment as a Luxury Car Rental Specialist after he assists us in opening our new branch there [(sic)]. The Trainee will not compete with any of the company's employees and will not displace any U.S. workers. We do not utilize, nor rely upon trainees to perform productive duties, and the Trainee is undergoing training with our company specifically to qualify him to assume a specialized managerial position abroad.

According to section 8, Time and Amount of Supervision and Titles of Persons Providing Training, the beneficiary "will be rotated through" the petitioner's five employees, one employee at a time. Consequently, says the petitioner, as the beneficiary "is being trained in one area by one of the professionals there will still [be] employees work in full time at the office." This section also asserts that each of the petitioner's employees conducting the training "hold executive positions in the company" and, therefore, are fully capable of providing the training without supervision.

IV. ANALYSIS

A. Unavailability of the proposed training in the beneficiary's own country not demonstrated

The petitioner claims that the petitioner provides a special/unique delivery service for its luxury rental services. Specifically, the petitioner asserts that it delivers the car to the client anywhere and anytime, eliminating the need for the client to travel to its premises. However, while the petitioner asserts that this type of service is unique to the United States and is not available in Brazil, the petitioner did not submit documentary evidence to substantiate its claims. Without such information, we are unable to determine whether training for this type of service is not available in Brazil.

Likewise on appeal, the petitioner asserts that the beneficiary "will learn specific terms and expressions used in the car rental business that can't be learned at any English school in Brazil." The petitioner also claims that training in [redacted] is necessary because of its diverse population which provides opportunities to interact with clients from different parts of the world. However, the petitioner did not provide documentary evidence to substantiate its need for language training. There is no evidence in the record that clients for luxury car rental in Brazil are from other countries including the United States. Without such information, we are unable to determine if such training is not available in Brazil. Going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner further attests that its training program would instruct the beneficiary in the use of car-rental computer software. The petitioner submitted a letter from a company in Brazil, [REDACTED], to assert that certain software applications used in the United States, such as [REDACTED], is not available in Brazil. However, we note that the availability of [REDACTED] is not at issue, as it is *not* among the software applications listed in the training program. More importantly, while the letter indicates that his firm "deliver[s] IT services customized" and "provide[s] effective technology solutions to keep its customers satisfied," he does not describe the range of its clients, either by location or industry. Notably, neither his letter nor any other evidence establishes that either the course of his business or any other endeavor has equipped him with sufficient knowledge to substantiate his statements about U.S. and Brazil car-rental software to merit any significant weight. Moreover, unavailability of [REDACTED] in Brazil raises the question of whether such software would be available for the beneficiary's use in the future, and without such information, we are unable to determine if such training is necessary and how it relates to the beneficiary's work in Brazil. This inconsistency is not addressed in the record of proceeding, and undermines the credibility of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

We also accord little probative weight to the letter from the manager of [REDACTED], a travel agency in Brazil. While the [REDACTED] manager states that his travel agency is regularly involved with the tourist and car rental business in Brazil, his letter does not indicate that he has knowledge of luxury car rental training in Brazil. Also, while he opines that the "implementation of U.S. techniques, software and processes will immensely help the [luxury car] industry grow and develop" in Brazil, he does not specifically address the petitioner's proposed training program or what, if any, aspects of that program are not available in Brazil. In short, the [REDACTED] letter adds little value towards demonstrating the requisite unavailability of training in Brazil.

We further find that the generalized descriptions of the training topics that appear in the TP document do not indicate why training in those same topics could not be provided in Brazil. In this regard, we also find that the generalized level at which each topic is described² is inadequate to distinguish the petitioner's training in those topics from training in those topics that may be available in Brazil.

² As evidenced, for example, by the TP document's topic descriptions "Insurance," "Luxury car rental Tools and Principles," "Target Audiences," and "Research," the descriptions of almost all of the topics are limited to relatively abstract phrases that do not convey any substantive particulars indicating that such topics would require training in the United States.

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the petitioner "to demonstrate" – not just attest - that that the proposed training is not available in the beneficiary's own country, Brazil. The petitioner has not met this burden.

B. Limitation on productive employment not demonstrated

The Director also denied the petitioner under 8 C.F.R. § 214.2(h)(7)(ii)(A)(3), which requires the petitioner to "demonstrate" that "[t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training."³ Although productive employment is not prohibited under the H-3 program, "only minimal productive employment is permitted." 55 Fed. Reg. 2606, 2618 (Jan. 26, 1990).⁴

The petitioner proposes a training program of 12 months of 40-hour weeks. At section 6 of the TP document the petitioner asserts that the beneficiary will engage in "[a] very limited amount of PRODUCTIVE employment incidental to the training program"; that his productive employment will be limited to what is "unavoidable in giving him practical training" in the petitioner's business operations; and that the productive employment would be approximately 10% of the "Supervised Practical Training" to which the 2:00 p.m. to 6:00 p.m. period of each training day would be devoted. At section 7 of the TP document, the petitioner adds that "the Trainee will generally be an observer where practical training requires his presence during operations."

The Director specifically noted this ground in the NOIR and requested documentation such as training materials, books, and computer software that will be used to train the beneficiary. In response to the NOIR, the petitioner requested additional time, stating that it is "waiting for some documentation from abroad to complete and submit the response." However, to date, the petitioner has not submitted additional evidence. Therefore, the petitioner has not met its burden under 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) to demonstrate that "[t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training."

V. BEYOND THE DECISION OF THE DIRECTOR

Beyond the decision of the Director, we find also that approval of the petition is precluded by the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(A) against approving a training program which deals in

³ The corollary restriction on training programs at 8 C.F.R. § 214.2(h)(7)(iii)(E) forbids approval of a training program which "[w]ill result in productive employment beyond that which is incidental and necessary to the training."

⁴ The legacy Immigration and Naturalization Service (INS) was responding to a comment submitted in response to a proposed regulation. The commenter had "stated that the standard for productive labor should be modified so that it can be realistically involved with the training, and the best way to receive training is to do hands on work." In response, the legacy INS affirmed that "[w]hen a training program is characterized as hands-on training [(as is primarily the case in the instant petition)], it is difficult to establish that the training is not principally productive employment," and that "only minimal productive employment is permitted." *Id.*

generalities with no fixed schedule, objectives, or means of evaluation.⁵ We reach this conclusion based upon our independent review of the entire record of proceeding. We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Since each of the identified bases for denial is dispositive of the petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the petitioner seeks again to have the beneficiary or another person classified as an H-3 trainee, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

We refer the petitioner back to our earlier comments and findings with regard to the generalized and relatively abstract level to which the petitioner limited its descriptions of the topics which the training program would cover. Additionally, the petitioner outlines the proposed training only in two, four, and six-month periods, an approach which, we find, is not sufficiently detailed to provide the specificity of training information that this section of the regulation contemplates by requiring a fixed schedule and fixed training objectives. For example, while the petitioner asserts on the appeal that the beneficiary needs to learn "how to treat VIP clients properly," explain how to "operate a Ferrari or a Lamborghini," that such "process is very detailed," and that the beneficiary "needs to be trained regarding the presentation to the client," the petitioner's training program does not include such objectives. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

VI. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

⁵ The Director correctly stated that, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(A), a training program may not be approved which deals in generalities with no fixed schedule, objectives, or means of evaluation. However, as the Director's decision did not discuss a factual foundation for taking this statement as an additional basis upon which the Director was denying the petition, we do not regard it as such.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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