



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

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

MATTER OF T-A-C-A-

DATE: NOV. 17, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a professional association, seeks to classify the Beneficiaries as “correctional trainees” under the H-3 trainee classification. See Immigration and Nationality Act (the Act) § 101(a)(15)(H)(iii), 8 U.S.C. § 1101(a)(15)(H)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUES

The issues before us are whether the proposed training program (1) is not available in the Beneficiaries’ own country; (2) would benefit the Beneficiaries in pursuing a career outside the United States; (3) is in a field in which it is unlikely that the knowledge or skill will be used outside the United States; and (4) the Petitioner has the physical plant and sufficiently trained manpower to provide the training specified.¹

II. LEGAL FRAMEWORK

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.”

¹ We reviewed the record in its entirety before issuing our decision. We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); see also 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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

An H-3 classification applies to a foreign national 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 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 divide 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), states the *conditions* as follows:

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 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 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 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. THE PROPOSED TRAINING PROGRAM

In its January 14, 2015, letter, the Petitioner claimed to be the oldest association serving practitioners in the correctional profession, and provided the following list as examples of its principal activities:

- Development and provision of training programs for staff of correctional facilities across the United States.
- Development of standards and best practices used in correctional systems throughout the United States.
- Auditing services to correctional agencies covering administration and management, physical plant, institutional operations and services, and inmate programs.

In a document entitled “[Petitioner] H-3 Training Program and Schedule,” the training program’s objective is described as:

Objectives of Training: Trainees will learn state-of-the-art United States correctional facility best practices, procedures, methods, policies, management structure, and operations so that they may apply these skills and knowledge in the Saudi Arabian correctional system upon their return to work at the conclusion of the training program. Upon completion of the program, the Trainees will have developed a deep understanding of the practical operation of all departments of a correctional institution in the United States.

The Petitioner explained in its January 14, 2015, letter that the training program proposed in the instant H-3 petition would actually be the third phase of a larger, three-phase training program, and the first two phases have already been completed. The three phases of the larger training program are:

- Phase One: A 12-month period of English language instruction (completed).

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- Phase Two: A three-week period of classroom training conducted at the Petitioner's headquarters (completed).
- Phase Three: A 12-month period of classroom training, on-the-job shadowing, and attendance at a Petitioner-sponsored conference (the subject of the instant petition).

The Petitioner stated that it is now ready to implement Phase Three of the training program, and that during this 12-month period the Beneficiaries would, under the supervision of the Petitioner, receive onsite training at the [REDACTED] located in [REDACTED] Virginia.² The Petitioner indicated that the Beneficiaries would shadow correctional officers at the [REDACTED] "in the performance of their duties through 13 different functions within the [REDACTED] as follows:

- Detainee Intake Process;
- Correctional Food Service Operations;
- Educational Services/Library Operations;
- Health Care/Mental Health Department;
- Disciplinary/Grievances Policy;
- Laundry Service Operations;
- Detainee Religious Accommodation;
- Inmate Industrial Arts Programs;
- Security Operations and Policy;
- Inmate Classification Methods;
- Treatment Plans and Case Management;
- Inmate Programming Services; and
- Visitation Operations.

In support, the Petitioner submitted a Memorandum of Understanding with the [REDACTED] Sheriff's Office, which operates the [REDACTED]

The Petitioner stated that the Beneficiaries would engage in 1,920 hours of on-the-job shadowing during the 12-month period, attend 96 hours (12 weeks) of classroom instruction,³ complete 101 hours of online coursework, and attend a one-week conference sponsored by the Petitioner.

² Although the instant petition was filed for only two Beneficiaries, the language of the Petitioner's letter indicates that it hopes to ultimately open the training program to 18 additional trainees. Specifically, the Petitioner stated the following:

[The Petitioner] is now implementing Phase 3 of the training program, by which each of the twenty trainees will, under the direction and supervision of [the Petitioner], be assigned to one of several correctional institutions throughout the U.S. to receive onsite training. The sites are to be located in Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Oklahoma, Tennessee, Texas, Virginia, and Washington. This Petition applies only to the Trainees and training program to be conducted in [REDACTED] Virginia for the benefit of [the Beneficiaries].

³ The Petitioner explained in the "H-3 Training Program and Schedule" document that these 96 hours would break down into 12 full days of classroom instruction – one day per month.

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In the “[Petitioner] H-3 Training Program and Schedule” document, the Petitioner explained that all 1,920 hours of the on-the-job shadowing component would take place at the [REDACTED]. The Petitioner stated the following:

During On-the-Job Shadowing, [the Beneficiaries] will not be performing the duties of any [REDACTED] personnel and thus will not displace any U.S. workers. The [Beneficiaries] will engage in no productive employment during the course of the training, and will receive no compensation from [the Petitioner]. Rather, the purpose of On-the-Job shadowing is to provide an opportunity for [the Beneficiaries] to observe [REDACTED] personnel performing their job duties, exercising discretion, carrying out [REDACTED] policy, understanding the intricacies of U.S. correctional practice, and interacting with inmates through this extended opportunity to observe firsthand the functioning of a highly regarded correctional institution in the United States.

The Petitioner further outlined the structure of its proposed training program in an untitled document it submitted at the time of the petition’s filing, which broke the training program down into daily increments.⁴ The following excerpt, which describes the fourth week of February 2015, is representative of the document’s framework and detail:

Training Elements				
Week 1		Job Shadowing at	Classroom Coursework	Online Coursework
	22	Su		Working with Incarcerated Persons: Best Practices in Treatment 3 hours
	23	Mo	Correctional Food Service Operations – 8 hours	
	24	Tu	Correctional Food Service Operations – 8 hours	
	25	We	Correctional Food Service Operations – 8 hours	
	26	Th	Correctional Food Service Operations – 8 hours	
	27	Fr	Team Leadership Day 1-8 hours	
	28	Sa		

The Petitioner also submitted a document entitled “On-The-Job Shadowing Training Units” which further described the training program’s functions. The following excerpt, which describes the third, fourth, fifth, and sixth weeks of the training program, is representative of the document’s framework and detail:

⁴ A similar document breaking the program down into one-week increments was submitted in response to the RFE.

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Correctional Food Service Operations (Week 3-6)

Trainee will observe kitchen operations. Trainee will learn about food prep and service including sanitation and hygiene, meal service, nutrition and compounding factors, such as budgeting and religious and medical diets. Correctional workers will show the trainees how a correctional kitchen functions from inmate staff through meal service and cleaning procedures. The trainee will benefit from the staff knowledge of operating a kitchen that serves inmates 3 meals daily, 365 days a year taking many operational factors into considerations [*sic*]. This will be a 4 week assignment.

The evidence of record indicates that the Beneficiaries are currently working in correctional institutions in Saudi Arabia, and the Petitioner claims that they would resume their current employment upon completion of the training program.

IV. ANALYSIS

A. The Training Program as Described by the Petitioner Conflicts with the Agreement with the Government of Saudi Arabia

Before reviewing the Director's March 6, 2015, decision denying the petition, we first note that the training program described by the Petitioner appears to conflict with the agreement it signed with the Government of Saudi Arabia in July 2012. Specifically, we note the following on page three:

The twenty prison officials will each be assigned to a different prison or jail facility during this phase. No two participants will be assigned to the same institution to ensure that they will practice the English language and interact with the American correctional employees rather than each other. Multiple participants may be assigned to the same department or same state, but each will work in a different institution. . . .

Contrary to this provision, the record clearly indicates that, the two Beneficiaries would both train at the [redacted] throughout the duration of the training program. This conflict indicates that either (1) one of the Beneficiaries would not be working at the [redacted] as claimed by the Petitioner and/or (2) the July 2012 agreement submitted by the Petitioner has little probative value to this proceeding, as its language cannot be relied upon, which in turns raises similar questions regarding other evidence submitted in support of the petition. In any event, this discrepancy undermines the probative value of the Petitioner's claim. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

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B. The Unavailability of Training

As a condition for approval of an H-3 petition, the regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires the Petitioner to demonstrate that the proposed training is “not available” in the Beneficiary’s own country; and the provision at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires the Petitioner to submit a statement which indicates the reasons (1) why such training “cannot be obtained in the alien’s country” and (2) “why it is necessary for the alien to be trained in the United States.” The Beneficiaries are citizens of Saudi Arabia.

Notwithstanding our concerns regarding the evidentiary conflict discussed above, we find that the evidence of record as expanded by the Petitioner’s submissions on appeal appears to satisfy the requirements described at 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(1) and 214.2(h)(7)(ii)(B)(5). This portion of the Director’s decision, therefore, is hereby withdrawn.

C. Connection Between the Proposed Training and a Career Abroad for 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 Beneficiaries in pursuing a career outside the United States; 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) further requires the Petitioner to describe the career abroad for which the training will prepare the Beneficiaries; and 8 C.F.R. § 214.2(h)(7)(iii)(D) precludes approval of a petition for a training program “in a field in which it is unlikely the knowledge or skill will be used outside the United States.”

The Petitioner noted in its January 14, 2015, letter that the Beneficiaries are both long-term employees of the Saudi Arabian Directorate of Prisons, and claimed that they will continue their careers as “correctional officers and managers” in Saudi Arabia upon completion of the training program. The Petitioner claimed further that the Beneficiaries would “utilize their knowledge and skills in U.S. correctional best practices to improve the Saudi correctional system.”

The Petitioner submitted several documents regarding the current state of the Saudi Arabian correctional system, including the entry for Saudi Arabia in the U.S. Department of State’s Country Reports on Human Rights Practices for 2013; a document prepared by the National Society for Human Rights; a document prepared by [REDACTED] and a news article.

In addition, the Petitioner stated the following in the undated letter submitted in response to the RFE:

Petitioner is not providing a generic correctional training program such that may be available in Saudi Arabia. Rather, as demonstrated throughout the H-3 petition, Petitioner is providing training in U.S. correctional best practices, a large component of which is shadowing correctional workers at a U.S. correctional facility. . . .

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On appeal, the Petitioner contends that the Director “misconstrue[d] the fundamental nature of the [Petitioner’s] training program.” The Petitioner states that the purpose of the program is “to provide Beneficiar[ies] with substantial exposure to the nuts and bolts of how well-run U.S. prisons and jails operate.” The Petitioner further asserts that “the Training Program will provide the Beneficiaries with important career enhancing benefits that will be of great value to them in Saudi Arabia.” However, the Petitioner does not explain what these “career enhancing benefits” are and how “this substantial exposure” to U.S. prison system would be utilized by the Beneficiaries in Saudi Arabia.

In denying the petition, the Director questioned how “U.S. correctional training can be implemented in other countries with different laws and regulations.” The Director also found that “[t]he evidence of record does not include evidence of how this training might remedy human rights violations within the corrections system of Saudi Arabia.”

With regard to the Director’s statements regarding the differences in the laws and regulations of the United States and Saudi Arabia, the Petitioner states the following:

Even with regard to areas that could involve Saudi law or regulation, such as Detainee Religious Accommodation or Disciplinary/Grievance Policy, whether the Beneficiaries maintain the power to implement change in Saudi law and regulation is not the regulatory standard required by 8 C.F.R. § 214.(h)(7)(iii)(G).⁵

The Petitioner’s assertion is not persuasive. While we agree that the Beneficiaries are not required demonstrate the power to implement changes in Saudi law, the Director raised the concern to address the documentary evidence submitted by the Petitioner. As indicated above, one of the documents submitted by the Petitioner as evidence that it had satisfied these requirements was a news article from [REDACTED]. The article’s headline stated “‘Outdated’ prison regulations under fire,” and discussed the claimed “outdated rules and regulations” of the Saudi Arabian Directorate General of Prisons. Given that this article discussing “rules and regulations” was submitted *by the Petitioner* as evidence of eligibility under this criterion, the Director properly questioned the Beneficiaries’ ability to effect change with regard to such “rules and regulations.”

The Petitioner further contends that the Director’s statements regarding human rights violations were similarly inappropriate, stating that “[n]or may USCIS require [the Petitioner] to demonstrate that the results of its training program will lead to some kind of wholesale reform of, for example, the Saudis’ corporal punishment policies.” Again, these statements are not persuasive because the Director was addressing specific documentation submitted by the Petitioner. The Petitioner submitted documentation regarding human rights violations in Saudi Arabian prisons as evidence of eligibility under this criterion and, under that circumstance, the Director properly questioned the Beneficiaries’ ability to effect change with regard to such human rights violations.

⁵ The Petitioner’s citation to 8 C.F.R. § 214.2(h)(7)(iii)(G), which relates to physical plant and personnel, appears to have been made in error.

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Further, if the Petitioner is conceding that the training will not equip the Beneficiaries to address the “rules and regulations” and human rights abuses discussed in the documentation it submitted to support 8 C.F.R. §§ 214.2(h)(7)(ii)(A)(4) and 214.2(h)(7)(ii)(B)(4), then the record contains very little information or evidence addressing, let alone satisfying, these criteria.

We do not question the Petitioner’s repeated assertions that the Saudi Arabian government is paying for the training and that the Beneficiaries would return to their current positions following completion of the training. However, the evidence of record does not demonstrate what the Beneficiaries will actually do with their newfound knowledge upon their return, and generalized statements regarding “best practices” do not sufficiently establish how the training will benefit the Beneficiaries in their careers in Saudi Arabia or how it will be utilized outside of United States.

D. Physical Plant and Sufficiently Trained Manpower to Provide the Training Specified

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) states that a training program may not be approved where the evidence of record does not establish that the Petitioner has the physical plant and sufficiently trained manpower to provide the training specified in the petition.

The Petitioner has not established that it has the physical plant and sufficiently trained manpower to provide the training. As discussed, the evidence of record indicates that the Petitioner has contracted with another entity, [REDACTED] to provide the overwhelming majority of the training. Specifically, during the 12-month period, the Beneficiaries would engage in 1,920 hours (or 48 weeks based on a 8-hour work day) of on the job-shadowing at [REDACTED]. Therefore, Petitioner has not established that it has neither the physical plant nor sufficiently trained manpower to provide the training specified in the petition.

V. ORAL ARGUMENT

The Petitioner’s April 7, 2015, request oral argument before us is acknowledged. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). The written record of proceeding fully represents the facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.

VI. CONCLUSION AND ORDER

On appeal, we have withdrawn the Director’s determination that the proposed training is not available in Saudi Arabia, the Beneficiaries’ own country. However, we agree with the Director that the evidence of record does not demonstrate that the knowledge or skill will be used outside the United States and the proposed training would benefit the Beneficiaries in pursuing a career in Saudi Arabia. We also find that the evidence of record does not establish that the Petitioner has

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sufficiently trained manpower to provide the training specified in the petition. Accordingly, the appeal will be dismissed.

We may deny an application or petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001); *see also Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015) (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 Enters., Inc. v. United States*, 229 F. Supp. 2d at 1037; *see also BDPCS, Inc. v. FCC*, 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.”).

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-A-C-A-*, ID# 14475 (AAO Nov. 17, 2015)