



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

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

MATTER OF G- LLC

DATE: FEB. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Brazilian restaurant, seeks to classify the Beneficiary under the H-3 trainee classification. *See* 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, California 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 (1) the Petitioner's description of the proposed training program is adequate¹; (2) the Beneficiary would engage in productive employment beyond what is incidental and necessary to the training;² (3) the Petitioner has sufficiently trained manpower to provide the training specified in the petition; and (4) the training would benefit the Beneficiary in pursuing a career outside the United States.³

II. LEGAL FRAMEWORK

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for “[a] [foreign national] 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

¹ While this was not the first issue discussed in Director's decision, we will discuss it first because our finding on the issue impacts our adjudication of the remaining two issues that mandates dismissal of the appeal.

² The Petitioner claims on appeal that this issue was not raised in the Director's request for evidence (RFE). To the extent that this is correct, it is not clear what it is not clear what remedy would be appropriate beyond the appeal process itself. The Petitioner has in fact supplemented the record on appeal, and it would therefore serve no useful purpose to remand the case simply to afford the Petitioner yet another additional opportunity to supplement the record with new evidence.

³ 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).

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 [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:

[Foreign national] 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 [foreign national] trainee” - at 8 C.F.R. § 214.2(h)(7)(ii)(A) (“Conditions”) and (B) (“Description of training program”); and
- “Restrictions on training programs for [foreign national] 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 [foreign national]’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 [foreign national]'s country and [(b)] why it is necessary for the [foreign national] 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 [foreign national] 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 [foreign national] 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 [foreign nationals] 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 the letter of support dated November 26, 2014, the Petitioner explained that it is a [REDACTED] located in [REDACTED], Michigan. The Petitioner stated that it opened in [REDACTED] employs 44 individuals, and grossed \$1.8 million in 2011. Explaining its desire to employ the Beneficiary as an H-3 trainee for a period of 20 months, the Petitioner stated the following:

For the past eight years, [the Petitioner's owner] . . . has been developing proprietary restaurant management software,⁴ which provides a "Portal" to all data and controls relevant to the restaurant's operations. She has been testing the Portal in [her] restaurant; once complete, she plans to market the Portal to the restaurant industry. The Portal is now fully developed, and we are currently in the process of patenting the software and securing all rights, both in the U.S. and abroad. We have concrete plans for a new restaurant to open in Brazil; this restaurant design has been optimized to wholly integrate all aspects of the Portal to maximize efficiency and profit. This new restaurant, in addition to expanding the business, will also promote the sale of the Portal itself to others in the international restaurant industry.

In order to achieve these goals, [the Petitioner] needs an experienced restaurant manager who can fully utilize all aspects of the Portal software in the management of the new restaurant in Brazil. . . .

⁴ The record of proceedings contains information indicating that the Petitioner's owner worked in the field of information technology prior to entering the restaurant business.

In its December 15, 2014, letter the Petitioner explained that the Beneficiary would be “training in the restaurant management software currently being patented by [the Petitioner’s owner] for the express purpose of opening a restaurant in Brazil that utilizes the software, and promoting its use in restaurants abroad,” and emphasized that the Beneficiary would be “coming to the United States solely to train in this new proprietary software in order to be at the forefront of its implementation abroad.”

With regard to the training program itself, the Petitioner stated the following in its November 26, 2014, letter:

The purpose of the training program, therefore, is to provide advanced knowledge of all aspects of [the Portal]. The Portal collects, organizes, and tracks data pertaining to all aspects of a restaurant’s operations, including: employee data, sales, operational management, inventory, tasks, payroll, finance, document management, marketing, purchases, reservations, tips, and marketing campaigns. The Portal allows users to access and analyze the data in various ways, which aids in managing the day-to-day restaurant operations as well as forecasting its needs based on historical data.⁵

The trainee will be provided with a comprehensive understanding of each of the areas of the Portal, through sit-down, classroom-style training and hands-on operation. Each training phase is one to two months and will concentrate on the full use of one aspect of the Portal at a time as well as building upon previous areas. Because the training is in the use of the Portal software and not in the management of the restaurant, the trainee must already have significant experience with restaurant management, so that he will understand how to fully implement the software to streamline restaurant operations, forecast various trends, and make strategic decisions. The longer phases of the training are those concerned with producing reports of various kinds, which are a critical function of the Portal and are not available with any other software.

The Petitioner claimed that its CEO, who developed the Portal, would supervise the training program, with assistance from the Petitioner’s manager. The Petitioner explained that the Beneficiary would spend approximately half of his time in classroom training, and that he would spend the remaining half in “real world usage guided by trainers.” The Petitioner claimed that the Beneficiary “will not engage in *any* productive work.” (Emphasis added.)

The Petitioner outlined the structure of its proposed training program in a document entitled “Training Program Syllabus” (TPS) submitted with response to the Director’s RFE. The TPS

⁵ Emphasizing the proprietary nature of the information provided therein, in her January 22, 2015 letter the Petitioner’s CEO described the Portal in further detail, explained how it differed from other restaurant management programs, and stated her opinion that its “functionality and accessibility . . . far exceeds what is currently available[.]”

outlines the 20-month training program by one- or two-month periods. Each increment outlines the subject matter, duration, supervision, a one-sentence objective, a one- to three-sentence description,⁶ reading material, and the percentages of time to be spent in classroom and on-the-job training. The following excerpts are representative of the TPS’s framework and detail:

Part 3: Servers, Sales, and Tips

Duration: 1 month
Immediate Supervision: [Name withheld], Restaurant Manager
Overall Supervision: [Name withheld], Restaurant Owner
Objectives: Utilize the Portal to produce sales reports and optimize employee training

The trainee will learn how to control reports showing how many and how much each server sells in each category. In addition to providing information about employee performance, these reports facilitate employee training.

This will also train the beneficiary in the tip system, integrating titles, percentages, and time of operations.

Training Documentation[:] Portal “Page 12” and “Page 13,” [Petitioner] Employee Training Materials
TABS: 8, 22, 23, 24, 25, 26⁷
Classroom instruction: 80 hours (50%)
On-the-job training: 80 hours (50%)

.....

Part 5: Reservations

Duration: 1 month
Immediate Supervision: [Name withheld], Restaurant Manager
Overall Supervision: [Name withheld], Restaurant Owner
Objectives: Utilize the Portal to manage restaurant reservations

The trainee will demonstrate a comprehensive understanding of how to manage the restaurant reservation system. This system shows the number of reservations, percentage of how many guests were actually served, and additional information about reservations and guests.

Training Documentation[:] Portal “Page 15”
TABS: 10
Classroom instruction: 80 hours (50%)
On-the-job training: 80 hours (50%)

⁶ The Petitioner’s description of the training program’s first increment is the single exception; it contained a nine-sentence description.

⁷ The Petitioner submitted screenshots taken from a computer utilizing the Portal.

IV. ANALYSIS

A. Adequacy of the Petitioner's Description of the Training Program

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) requires the Petitioner to submit a statement describing “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) precludes 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 description of the training program “vague” with “large blocks of time accounted for in spans of 80 hours to 160 hours.” The Director stated that absent further detail, the evidence is “insufficient to establish that the training program has a fixed schedule and does not deal in generalities.”

We agree with the Director's assessment of the Petitioner's description of the training program, and concur that, in its current iteration, 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). While these regulations do not require a petitioner to account for every minute, or even every hour, of a beneficiary's time, their plain language requires a petitioner to describe a training program's structure, the type of training, and the supervision to be given, and to also establish that the program does not deal in generalities. The description, therefore, must be meaningful. However, as noted by the Director, the Petitioner's description contains “large blocks of time accounted for in spans of 80 hours to 160 hours.”

For example, the Petitioner identified “Part 3” of the proposed training program as focusing on “Servers, Sales, and Tips.” The Petitioner asserted that the Beneficiary will “learn how to control reports showing how many and how much each server sells in each category,” and these reports will “facilitate employee training” “[i]n addition to providing information about employee performance.” The Petitioner also stated that this “will also train the beneficiary in the tip system, integrating titles, percentages and time of operations.” Although the Petitioner stated that this increment would last 160 hours – an entire month – it devoted only three sentences to explain the Beneficiary's day-to-day activities. The Petitioner's three-sentence description affords us with little meaningful insight into what the Beneficiary would actually do during either the classroom or the on-the-job training portions during this increment of the program. The record of proceedings does not sufficiently document that learning to control reports or training on the tip system would take up to 160 hours.⁸ Further, the Petitioner did not provide sufficient evidence regarding how these reports “provide information about employee performance” and “facilitate employee training.”

⁸ The exhibits submitted by the Petitioner are acknowledged. However, they do not cure these deficiencies. They do not specifically explain how the Petitioner will fill these large periods of time.

Likewise, in Part 5, "Reservation," the Petitioner asserts that the Beneficiary "will demonstrate a comprehensive understanding of how to manage the restaurant reservation system" which again requires 80 hours of classroom instruction and 80 hours of on-the-job training. In support, the Petitioner submitted a one-page of screenshot which provides information such as the total number of reservations and sales for the month of October in 2008, 2009, and 2010. However, it is not clear from this one page document what the Beneficiary would be doing to fill 80 hours of classroom instruction or 80 hours of on-the-job training. The Petitioner's information about the proposed training program lacks content that is sufficiently detailed and specific to establish that the Beneficiary's training would be governed by a fixed schedule, already determined by specific time periods designated for a specific training, and also characterized by objectives or means of evaluation.

In addition, the Petitioner claims that the trainee must already have "significant experience with restaurant management" since "the training is in the use of the Portal software and not in the management of the restaurant." However, the record does not establish that the Beneficiary has significant experience in restaurant management. Instead, the Petitioner describes the Beneficiary as "a highly accomplished chef and meat carver with more than 30 years of restaurant experience." The Petitioner also indicated that the Beneficiary "understands all aspects of meat preparation and procedures, including meat inventory and supply, and can expertly carve up to 25 different cuts of meat, including beef, pork, chicken, lamb, and seafood." While the Beneficiary may have 30 years of "restaurant experience," it is not clear if the Beneficiary's experience as a chef and meat carver qualifies as "significant experience" in managing day-to-day operation of restaurants or "understand[ing] how to fully implement the software to streamline restaurant operations, forecast various trends, and make strategic decisions." This further highlights the lack of clarity in establishing the purpose and objectives for the training program.

Therefore, we find that the evidence of record satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) nor 8 C.F.R. § 214.2(h)(7)(iii)(A).

As noted above, the inadequacy of the current program description impacts our adjudication of each of the remaining grounds of dismissal discussed below.

B. Productive Employment Beyond What is Incidental and Necessary to the Training

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) requires that the evidence of record demonstrate that "[t]he beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training." As a corollary, 8 C.F.R. § 214.2(h)(7)(iii)(E) proscribes approval of a training program which "[w]ill result in productive employment beyond that which is incidental and necessary to the training."

As a preliminary matter, we incorporate here our previous discussion of the inadequacy of the description of the training program contained in the record. Absent a clear picture of what the Beneficiary would actually be doing while taking part in the training program, it is impossible for us to determine whether he (1) would engage in any productive employment, and (2) if so, whether

such productive employment would extend beyond that incidental and necessary to the training. For this reason alone, the evidence of record does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) and 8 C.F.R. § 214.2(h)(7)(iii)(E).

Furthermore, the record contains conflicting claims by the Petitioner as to whether the Beneficiary would engage in productive employment. In the letter dated November 26, 2014, the Petitioner stated that “the training program will include some interaction with the day-to-day operations of the restaurant incidental to the Portal training”; however, the Petitioner also states that but “the trainee will not engage in *any* productive work” (emphasis added). Then, on appeal, the Petitioner states that “some engagement with the normal operations of the restaurant is necessary.” Given the Petitioner’s inconsistent claims as to whether productive employment would exist, we cannot ascertain whether the productive employment (if it exists) would extend beyond that incidental and necessary to the training. Moreover, as indicated above, the Petitioner’s initial claim that the Beneficiary would engage in no productive employment appears to conflict with its description of the on-the-job training proposed for the Beneficiary. Finally, the Petitioner did not include a statement which “sets forth the proportion of time that will be devoted to productive employment” pursuant to 8 C.F.R. § 214.2(h)(7)(ii)(B)(2).

For all of these reasons, the evidence of record does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(A)(3) and 8 C.F.R. § 214.2(h)(7)(iii)(E). Accordingly, the appeal will be dismissed and the petition denied on this basis.

C. Sufficiently Trained Manpower to Provide the Training Specified

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(G) proscribes approval of a petition where the evidence of record does not establish that the Petitioner has sufficiently trained manpower to provide the training specified in the petition. The Petitioner claims that the Beneficiary would spend approximately fifty percent of his time in classroom training and fifty percent of his time in on-the-job training, and has identified two employees who would train the Beneficiary during this period of time. In denying the petition on this ground, the Director expressed concern over how these individuals would perform their normal duties while providing this training to the Beneficiary.

The two central deficiencies we identified above – the lack of a detailed description of the training program and the Petitioner’s inconsistent statements with regard to the existence of productive training – preclude a finding that the evidence of record satisfies this criterion. Absent a meaningful description of what the Beneficiary would actually be doing, and thus what the training would actually entail, we cannot determine whether the Petitioner has the manpower to provide it. With regard to the inconsistent statements regarding productive employment, we incorporate our discussion above, particularly that portion discussing the significance of those inconsistencies and their impact on the on-the-job training component of the training program. Again, if we cannot determine what the Beneficiary would be doing during the on-the-job training portion of the training program, we cannot determine whether the Petitioner has sufficient manpower to supervise it.

For all of these reasons, the evidence of record does not satisfy 8 C.F.R. § 214.2(h)(7)(iii)(G). Accordingly, the appeal will be dismissed and the petition denied on this basis.

D. 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 Beneficiary in pursuing a career outside the United States; and 8 C.F.R. § 214.2(h)(7)(ii)(B)(4) requires the Petitioner to describe the career abroad for which the training will prepare the Beneficiary. We again incorporate here our previous discussion of the inadequacy of the description of the training program contained in the record. Absent a detailed and meaningful description of the training program, we are not able to determine whether the training will benefit the Beneficiary in pursuing a career outside the United States.

Therefore, the Petitioner did not establish that the training will benefit the Beneficiary in pursuing a career outside the United States.

V. CONCLUSION AND ORDER

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. Again, we first and foremost find the Petitioner's description of the proposed training program inadequate. We also find that the evidence of record does not establish: (1) that the Beneficiary would not engage in productive employment beyond that incidental and necessary to the training; (2) that the Petitioner has sufficiently trained manpower to provide the training specified in the petition; and (3) that the training would benefit the Beneficiary in pursuing a career outside the United States.

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). Here, that burden has not been met.

Matter of G- LLC

ORDER: The appeal is dismissed.

Cite as *Matter of G- LLC*, ID# 13861 (AAO Feb. 12, 2016)