



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

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

MATTER OF I-USAE- LLC

DATE: JUNE 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a tennis academy, seeks to temporarily accept the Beneficiary into its training program for professional tennis under the H-3 nonimmigrant trainee program. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(iii), 8 U.S.C. § 1101(a)(15)(H)(iii). The H-3 program allows an individual or organization in the United States to invite certain foreign nationals to receive job-related training that is not available in their home country, for work that will ultimately be performed outside of the United States.

The Director, Vermont Service Center, denied the petition for not establishing (1) that the Beneficiary qualifies for H-3 classification under the Act, and (2) that the proposed training program satisfies the H-3 regulatory requirements.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief that asserts that the Director erred by (1) not explaining specific reasons for the denial, (2) imposing evidentiary requirements not authorized by statute or regulation, and (3) not applying preponderance of the evidence as the standard of proof.<sup>1</sup>

Upon *de novo* review, we will withdraw the Director's decision but remand the matter for further action.

#### I. 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."

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<sup>1</sup> 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 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;

(b)(6)

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- (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.

## II. THE REMAND

We find that the Director's decision clearly states only one specific reason for denial, which the Director expressed in her conclusion that "the record is insufficient to show that [the Petitioner] [has] a well[-]structured training program to include an established evaluation criteria [*sic*] and process." In the context of the particular evidentiary record before us, we view that language as conveying no more than the Director's determination that approval of the petition was precluded by the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(A) against approval of a training program which "[d]eals in generalities with no fixed schedule, objectives, or means of evaluation." However, our review of the entire record of proceedings leads us to conclude that the record's information about the proposed training program's schedule, objectives, and means of evaluation is sufficient to satisfy the content requirements for an approvable H-3 training program. Therefore, we will withdraw the Director's decision. However, we will also remand the matter for further action, as discussed below.

The Petitioner seeks to have the Beneficiary participate as a trainee in its two-year [REDACTED] [REDACTED]. The record establishes that the [REDACTED] is designed to fully employ the periodized training method developed by [REDACTED] the director of the Petitioner's tennis academy (Academy Director). However, the record of proceedings does not establish the issue of whether the proposed training is unavailable outside the United States.

The condition for petition approval 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. The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(5) requires that the Petitioner's description of the training program "indicate[s] 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."

We note that the Petitioner submitted an attestation from the Beneficiary's coach that the proposed training program is not available in Israel. Along with that attestation and the Petitioner's assertion that its [REDACTED] is unique, the record of proceedings also includes (1) Internet advertisements indicating that the Academy Director has marketed at least [REDACTED] series of DVDs [REDACTED] and [REDACTED] and (2) an excerpt from the Academy

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Director's Internet site that credits him with (a) establishing [REDACTED] (b) [REDACTED] to a [REDACTED] and to "the [REDACTED] and [REDACTED] and (c) creating a network of sales agents in [REDACTED] countries around the world. While they do not establish that the Petitioner's proposed training program is available in Israel or elsewhere outside the United States, the documented scope of the Academy Director's professional activities, his well-recognized expertise in tennis coaching, and the availability of at least some of his coaching methods through DVDs on sale on the Internet provide a reasonable basis for further inquiry as to whether the substantive techniques and methods comprising the Petitioner's [REDACTED] have been incorporated into similar training programs available in Israel, such that it might not be necessary for the Beneficiary to come to the United States for the proposed training.<sup>2</sup>

Therefore, this matter will be remanded to the Director to (1) specifically determine whether the preponderance of the evidence of record satisfies the regulatory provisions at 8 C.F.R. §§ 214.2 (h)(7)(ii)(A)(1) and (h)(7)(ii)(B)(5), and (2) render a new decision that accords with that determination.

III. CONCLUSION

As discussed, the evidence of record does not demonstrate that the training program satisfies the requirements for the H-3 nonimmigrant trainee program. Consequently, the matter will be remanded to the Director for further review and issuance of a new decision in accordance with the applicable statutory and regulatory provisions. The Director may request any additional evidence considered pertinent to the new determination.

**ORDER:** The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of I-USAE- LLC*, ID# 16842 (AAO June 1, 2016)

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<sup>2</sup> We also note that while the Academy Director's training may not be available in Israel, a search of the Internet indicates that there are professional tennis programs available in Israel. See [REDACTED] and [REDACTED] (last visited May 31, 2016).