



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

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

MATTER OF E- LLC

DATE: MAY 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a clinical information technology firm, seeks to temporarily accept the Beneficiary for training as a "software specialist" under the H-3 nonimmigrant trainee program. *See* Immigration and Nationality 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, concluding that the proposed training as described in the record does not meet the requirements of the H-3 trainee program. Specifically, the Director found that the training program is "on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training," and is "designed to extend the total allowable period of practical training previously authorized a nonimmigrant student."

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and contends that the Director committed "legal and factual error." The Petitioner maintains that the Director did not recognize substantial differences between the Beneficiary's optional practical training (OPT) program for the Petitioner and the proposed H-3 training program. The Petitioner also asserts that the Director did not properly weigh the evidence that the proposed training would introduce the Beneficiary to aspects of the Petitioner's software beyond the Beneficiary's present knowledge and experience.

Upon *de novo* review, we will dismiss the appeal.

I. 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 graduate medical education or training, in a training program that is not designed primarily to provide productive employment."

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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 visa program appear at 8 C.F.R. § 214.2(h)(7). The definitional provision for H-3 trainees, at 8 C.F.R. § 214.2(h)(7)(i), states: “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 (B) (“Description of training program”); and
- “Restrictions on training programs for alien trainee” - at 8 C.F.R. § 214.2(h)(7)(iii).

Our analysis will focus upon the two 8 C.F.R. § 214.2(h)(7)(iii) restrictions upon which the Director denied the petition. They are subsections (C) and (H) in the list of restrictions that the regulation at 8 C.F.R. § 214.2(h)(7)(iii) enumerates as follows (emphasis added):

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;

(b)(6)

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- (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. FACTUAL BACKGROUND

We have already noted that the proposed program does not meet the requirements of the H-3 trainee program. Before discussing the analysis that led us to this conclusion, we will first survey several aspects of the record that are relevant to our analysis of the issues before us.

A. The Petitioner and Its Relationship with the Beneficiary

In its letter of support filed with the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner describes itself as “a software company dedicate[d] to the innovative design and development of Electronic Medical Record (EMR) and Practice Management (PM) Software.” The record reflects that the Petitioner employed the Beneficiary when he was in OPT status under the F-1 (academic student) classification, and that the Beneficiary was still in F-1 (OPT) status at the time of the petition’s filing.¹

B. The Beneficiary’s Education

The record of proceedings indicates that the Beneficiary holds the following post-secondary degrees:

- A master of science degree in computer science, awarded by a U.S. university; and
- A four-year bachelor of science degree in IT engineering, awarded by the [REDACTED] India.

C. The OPT and the Proposed Training Program Compared

On appeal, the Petitioner recounts that, while on OPT, the Beneficiary “received on the job training as a Strategic Account Manager (SAM), and that the Beneficiary “received the basic training on various modules which are part of the Electronic Medical Record (EMR).” The record reflects that, as was the case with the Beneficiary’s OPT program, the focus of the proposed training program would be the computer software that the Petitioner’s letter of support describes as “[t]he pioneer product, *EMR and PM*.” According to the support letter, the EMR and PM software “takes data sets from multiple dat[a]

¹ OPT is a temporary employment that is directly related to an F-1 student’s major area of study. For more information, see “Optional Practical Training (OPT) for F-1 Students” available at <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/optional-practical-training> (last visited May 26, 2016).

sources - from practice management and from insurance claims systems - and combines them into a massive relational data and contains thousands of preprogrammed queries” which enables the user to “ask about quality of care, using quality guidelines long established in the public domain.”

1. The OPT Program

U.S. Citizenship and Immigration Services records reflect that the Beneficiary’s F-1 (OPT) period with the Petitioner ranged from February 14, 2013 to July 13, 2015, a period of more than two years.

On appeal, the Petitioner characterizes the OPT program as “basic” and “overall” training in its “EMR system and account management.” Also, the Petitioner’s comments on appeal and earlier in the record suggest that the Beneficiary’s OPT program was a basic foundation upon which the proposed H-3 training would build. Next, we see that the Petitioner’s support letter of June 26, 2015, includes the following description of the Beneficiary’s OPT program:

Over the past two years, [the Beneficiary] has been getting on the job training as a Strategic Account Manager (SAM). During the initial 3 months [he] was trained in our “New Hire Certification EMR and PM Agenda.” During this period he was introduced to the basics of Electronic Medical Records and how our EMR differs from other EMRs. [The Beneficiary] received the basic training during his initial year as a SAM which requires individuals to work with our senior SAMs and assist them in the following job duties:

- Actively be engaged in end user interaction, workflow analysis, design, build training and on-site support to implement [the Petitioner’s] electronic medical record [EMR] system functionality and client’s business process and compliance standards;
- Demonstrate the Customer Support Portal and ensuring that the client is web-enabled;
- Maintain ongoing communications with the client;
- Recommend new products, features, and/or services based on their needs to improve work[] flows and/or patient care[;]
- Work with other members of the EMR team in coordinating the implementation efforts with the end users/operations as well as coordinating and communicating with the end users and representatives from all areas of the hospital related to their specific applications, modules or features[;]
- Provides regular reports to key Program Managers and end users[;]
- Work with Division, Practice, and Center resources to implement clinical workflow and processes to successfully implement [the Petitioner’s] EMR solution[;]
- Develops EMR training plan and delivers EMR training to practice staff and physicians, following the specified [Petitioner’s] training standards. Conducts practice-specific clinical workflow analysis and design[;]

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- Provides on-site go live support[;]
- Promotes system security and patient confidentiality and helps ensure compliance[;]
- Works with physicians, clinical staff and the support organization to understand and research customization request[s][;]
- Drives resolution to end user issues. Works with all parties to prioritize issues and offer solutions.

The record also includes four certificates that the Petitioner's HR director issued to the Beneficiary for completion of training in the following areas related to its operations as a provider of EMR and PM software:

1. September 18, 2013: Meaningful Use
2. December 4, 2013: Kiosks Training
3. March 12, 2014: Nimbus Training
4. June 18, 2014: New Hire Certification EMR and PM Agenda

2. The Proposed Training Program

On appeal, the Petitioner states the following regarding its proposed training:

The beneficiary was previously employed at [the Petitioner] on an OPT where he received on the job training as a Strategic Account Manager (SAM). During his OPT training, [the beneficiary] received the basic training on various modules which are part of the Electronic Medical Records (EMRs). On June 29, 2015 the petitioner requested that the beneficiary be granted an H-3 Training visa so that [he] [could be] given an advanced training on specific model, medical devices for a six-month period.

Further, the Petitioner states:

[The Beneficiary] will be trained as an H-3 on the details of the specific features of medical devices which will be interfaced with eMobile and eMessenger. These features are related to but distinct from the EMR systems that the [B]eneficiary was trained on during his OPT period. While [the Beneficiary] was trained during OPT on the EMR systems, he will obtain advanced training during H-3 on how to interface these medical devices with the EMR models.

The proposed H-3 training marks a progression from the OPT program's focus on general characteristics of the Petitioner's EMR system to a more advanced focus upon specific features of the system's interface with various medical devices and how to adapt them to the needs of particular clients. The Petitioner further characterizes the H-3 training program as emphasizing hands-on experience with the Petitioner's software and close observation of employees implementing software adjustments required to meet specific clients' particular needs as follows:

Further, the petitioner explained in their support letter that the H-3 beneficiaries would need to complete advanced training on product specific requirements and how to adjust the workforce charts based on the client specific requirements. These client specific requirements will be addressed as the medical devices are integrated with existing PM systems and EMR systems. Unlike OPT, during the advanced H-3 training due to the complexity and the nature of training, the trainees will be shadowing senior implementation specialists to observe real scenarios of different workflows and processes of a specific product, the medical devices, during the client visit. During this H-3 training, the beneficiary will work directly with the medical devices software which are [*sic*] an advanced form of training distinct from what he was learning during OPT. [The beneficiary] will then be trained to work as the contact in [REDACTED] within the medical device lifestyle product integrations. . . .

III. ANALYSIS

For the reasons that we shall now discuss, we find that the Director was correct in denying the petition on each of the two grounds that she specified in the decision.

A. The Training Program May Not Extend the Total Allowable Period of Previously Authorized Practical Training

As the first basis for denying the petition, the Director specified the proscription at 8 C.F.R. § 214.2(h)(7)(iii)(H) against approving a training program that “[i]s designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.”

It is undisputed that the proposed H-3 training program would follow more than two years of practical training that the Petitioner provided the Beneficiary in F-1 OPT. Upon review of the entire record of proceedings, including the Petitioner’s assertions regarding the differences between the F-1 OPT program and the proposed H-3 training, we find that both training programs are designed with the same ultimate objectives in mind, that is, to advance the Beneficiary’s understanding of the Petitioner’s software product and how to adapt it to particular clients’ needs.

We recognize that the H-3 training program appears to involve significantly more emphasis upon the specific medical-device modules of the Petitioner’s software product. Still, we find that, contrary to the Petitioner’s contentions, the proposed training is not so distinct from the OPT program in goals and material. Comparing the OPT program with the proposed H-3 training as they are described by the Petitioner, we find that both periods of training are designed to familiarize the Beneficiary with the Petitioner’s software product and to prepare him to best interrelate with clients in his designing and implementing modifications to the software to best serve their particular needs. We also find that the proposed H-3 training is not a departure from the OPT program, but rather appears to build upon and supplement that earlier training, as reflected in the Petitioner’s characterizations of the OPT program as “basic” and the H-3 training as “advanced.

As discussed above, we conclude that the evidence of record is not sufficient to overcome the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(H) against the approval of an H-3 training program designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

B. The Training Program May Not Be on Behalf of Beneficiaries with Substantial Training and Expertise in the Field

As the second basis for denying the petition, the Director specified the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(C). It states that a training program may not be approved which “[i]s on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.”

To identify the “proposed field of training” in which to evaluate the Beneficiary’s training and expertise, we applied the occupational perspective that is suggested by the statement at 8 C.F.R. § 214.2(h)(7)(i) that an H-3 trainee seeks to enter the United States “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.” Thus, we interpreted the “proposed field of training” at 8 C.F.R. § 214.2(h)(7)(iii)(C) as substantially the same as the meaning attributed to a “field of endeavor” at 8 C.F.R. § 214.2(h)(7)(i).

Reviewing the evidence regarding the proposed training from this perspective, we find that the “proposed field of training” and the “field of endeavor” of the training sought by the Beneficiary is computer software development.

We find that the Petitioner has not provided persuasive evidence that (1) the Beneficiary’s approximately two years of OPT program by the Petitioner and (2) the Beneficiary’s attainment of a 4-year bachelor’s degree in IT engineering have not vested him with substantial training and expertise in the field of proposed training. Therefore, we conclude that the Director’s determination that the training program could not be approved in light of the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(C) was also correct.

IV. CONCLUSION

In sum, as our review of the entire record of proceedings leads us to conclude that the Director’s decision to deny the petition on the grounds specified in her decision was correct, the appeal will be dismissed.

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.

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ORDER: The appeal is dismissed.

Cite as *Matter of E- LLC*, ID# 16550 (AAO May 27, 2016)