



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

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

MATTER OF C-H-A-V-I- P.A.

DATE: SEPT. 28, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an investment business, seeks to temporarily accept the Beneficiary as a “medical office manager trainee” 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. The Director concluded that the evidence of record did not satisfy the regulatory conditions at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) and (h)(7)(ii)(A)(4) for approval of an H-3 trainee petition. Respectively, they require a petitioner to establish that the proposed training (1) “is not available in the alien’s own country,” and (2) “will benefit the beneficiary in pursuing a career outside the United States.”

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence, and asserts that the evidence of record does not support the grounds upon which the Director denied the petition.

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 “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

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- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

II. EVIDENCE OF RECORD

A. Business Plan

The Petitioner states that the proposed training program would equip the Beneficiary to manage a medical clinic that the Petitioner would open in Ecuador to provide medical services to expatriates on a level that they are accustomed to receiving in the United States. The Executive Summary (ExecSum) of the Petitioner's "Business Plan" states:

After evaluating multiple options and careful consideration, the most promising opportunity with safe investment and acceptable return on investment is the opening of a medical clinic that targets expatriates in [REDACTED] Ecuador.

Long term we strive to be the go-to provider in [REDACTED] and Ecuador for expatriates by providing exceptional quality, [U.S.] style medicine with multiple specialties available and multiple office procedures, same-day surgery offers reducing the need for hospitalization. We will provide a high quality environment with trained, professional staff that is fluid in English. We will streamline the patient's financial obligations by contracting with insurance companies in their home countries and also having a straightforward and published rate for all services provided.

The ExecSum identifies the Petitioner's target customers as foreign business executives, diplomats, U.S. retirees, and local patients who can demand and afford U.S. quality medicine. The ExecSum also includes the following statements about the value that the planned clinic would provide:

[REDACTED] lacks a dedicated medical clinic for its growing expatriate population. Foreigners have reservations towards the quality of medical services, especially regarding quality of staff training and clinic equipment. Payment arrangements are also uncomfortable for non-locals.

We will provide superior value compared to local, existing medical clinics by having medical doctors that have been trained in the [United States]. We will also contract with [U.S.] and international medical insurance companies and process the patients' insurance as it is done in their home country.

B. Proposed Training

A central part of the petition is the Petitioner's proposed training plan (TP) for a medical healthcare general office manager. The Petitioner submitted a TP dated June, 2015. It consists of (1) a written 15-page overview of each of the training modules into which the Petitioner asserts that it would

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divide the Beneficiary's training during the period requested in the petition, and (2) a wide array of materials (such as articles, outlines, presentation slides from various sources, Internet pages, and chapters from various books). The Petitioner also submitted a "Course Syllabus and Training Plan" (CS&TP), dated November, 2015. We shall here concentrate on that document, as it is the newer of the two.

The CS&TP is also accompanied by copies of articles, book excerpts, slide presentations, and other documents submitted as training materials for particular phases of the training. The collection of training documents is several-inches thick and covers a wide range of topics, including, but not limited to: (1) presentation slides, regarding "The Nature of Strategic Analysis and Thinking," which cover such topics as competitive forces analysis, Porter translation and analysis, and PEST and SWOT analysis; (2) sections from the Code of Federal Regulations dealing with financial relationships between physicians and entities furnishing designated health services; (3) a chapter from a book about resolving the dilemmas of ethical living; (4) materials from a [REDACTED] (5) a chapter, from an unidentified book, that is addressed directly to persons starting a new business and covers human resources and staffing considerations and responsibilities; (6) materials produced by the [REDACTED] regarding subjects such as physician compensation and production and a physician's professional liability costs; (7) a chapter from another unidentified book that deals with cash flow budgeting and capital budgeting, including such topics as tax appreciation and terminal value of SDL acquisition (including a related mathematical formula) and computing the future value of an ordinary annuity over time; (8) excerpts from professional provider manual on advanced cardiovascular life support. on an [REDACTED] publication; (9) questions dealing with legal issues for a physician, based upon various cited publications; (10) and detailed questions regarding an Act which governs when and how a patient may be (a) refused treatment or (b) transferred from one hospital to another when he is in an unstable medical condition.

According to the CS&TP, the TP consists of 20 modules, described by subject matter and duration as follows:

Module	Duration (weeks)
Introduction to the company	2
Introduction/Overview to the functioning of a [U.S.] system Medical Clinic	3
Electronic Medical Records	5
Front office function	4
Patient flow in the clinic	4
Billing, coding	5
Insurance companies in the [U.S.]	4
Data [A]nalysis, Quality Management, Quality Control	4
Introduction to [U.S.] medical training, licensing	4
Laboratory, inventory, supplies	3

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Basic medical knowledge	5
Basic medical statistics	3
Patient Satisfaction	4
Confidentiality, patient information safeguards	5
Human Resources	6
Cleanliness, housekeeping	3
Medical Clinic credentialing, legal issues	6
Basic Medical Office Management Skills	6
Wrap-up	2
Practical Components: Visit [U.S.] medical clinics, visit the [REDACTED] and the [REDACTED]	Imbedded

III. ANALYSIS

On the basis of our review of the entire record of proceedings, including all of the submissions on appeal, we conclude that the Director was correct in denying the petition on issue of the unavailability of the proposed training in the Beneficiary's own country, Ecuador. However, we will withdraw the second ground for denial, that is, that the evidence of record did not establish that the proposed training would benefit the Beneficiary in pursuing a career outside the United States. Because the Petitioner has not prevailed on both of the grounds for denial, the appeal will be dismissed.

As a condition of approval for an H-3 trainee petition, the provision at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1) requires that "[t]he petitioner demonstrate" that proposed training is not available in the Beneficiary's own country; in this case, Ecuador. The weight of all of the record's evidence on this issue and the Petitioner's relevant comments is not sufficient to demonstrate the requisite unavailability of training.

We note [REDACTED] attestation that, based upon his twenty years of medical practice in Ecuador, he is familiar with the health care training programs in that country and that a medical office manager program is not available there. However, we do not accord significant weight to [REDACTED] statement, in that the doctor has not established a persuasive factual foundation for his conclusion by providing such material information as the particular experiences, studies, authoritative sources, or other objective grounds upon which he based his conclusion.

We have also taken into account all of the record's evidence with regard to the Petitioner's efforts to obtain relevant information, including the unsuccessful Internet searches that the Petitioner reports, its unsuccessful efforts to obtain information from the Trade Commissioner of Ecuador in New York, and the information indicating that "the top universities in [REDACTED] do not offer a program similar to the Petitioner's. However, even considering all of the related evidence in the aggregate, we find that the evidence of record does not satisfy the Petitioner's affirmative burden "to demonstrate" that the training is not available in Ecuador, whether by direct training or on the

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Internet. In this regard, we note that the evidence of record does not address the scope of medical office administration or management training that may be available in Ecuador, whether or not designated with the same title as the Petitioner's TP. The record is insufficient to establish either that there are no medical-clinic-offices in Ecuador's private and government sectors or that such offices are managed by persons with no training.

Further, we note that, on their face, the scope, depth, and complexity of many of the Petitioner's training materials are questionable in terms of how they would relate practically to the type of position for which the training is proposed. As representative but nonexhaustive examples we refer the Petitioner to (1) the presentation slides about strategic analysis and thinking, including their references to various types of analytical tools whose applicability to management of a medical office is not obvious; (2) the lengthy materials introduced as [REDACTED] (3) the [REDACTED] materials regarding physician compensation and production and a physician's professional liability costs; and (4) the financial management materials dealing with such topics as capital budgeting, tax appreciation, terminal value of SDL acquisition, and computation of the future value of an ordinary annuity over time. This aspect of the petition leads us to question the extent to which the TP has been developed, and it undermines the credibility of the claim that the proposed training has been tailored for management of a medical office.

As discussed above, we will dismiss the appeal on the ground that the Petitioner has not satisfied the condition requiring it to demonstrate that proposed training is not available in the Beneficiary's own country.

IV. GENERALITIES

In the course of our *de novo* review, we observed an aspect of the proposed training program that would preclude approval of the petition at this time, even if the Petitioner had been fully successful in its appeal. Because the issue is not before us at this time, we shall only discuss the relevant issue to an extent that would alert the Petitioner to the deficiency so that it can be resolved should the Petitioner intend to file a new petition.

We find that the information for each module is not sufficient to overcome the restriction at 8 C.F.R. § 214.2(h)(7)(iii)(A) against approval of a training program which deals in generalities with no fixed schedule. In this regard, we draw the Petitioner's attention to the fact that while the TP lists topics to be covered in each weeks-long module, the TP does not provide a schedule fixed for at least each training week in terms of particular content and required training time. Thus, we cannot discern that the Beneficiary would actually be engaged in training, within the scope of the training goal, and for the full amount of the training period specified in the petition.

V. CONCLUSION

As discussed above, the Petitioner has not established that the proposed training is not available in the Beneficiary's own country. The burden is on the Petitioner to show 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.

Cite as *Matter of C-H-A-V-I- P.A.*, ID# 124323 (AAO Sept. 28, 2016)