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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D5

DATE: **APR 24 2012** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (the director) denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will remain denied.

The petitioning employer represented itself on the Form I-129 as a teaching hospital with "1,500+" employees. It seeks to employ the beneficiary as a pharmaceutical trainee for a period of five months pursuant to 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 denied the petition on the basis of his determination that the petitioning employer failed to establish: (1) that the proposed training program would not be provided primarily at or by an academic or vocational institution; (2) that the beneficiary would be employed by the petitioner; and (3) that it adequately described the structure of the training program.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; and (2) the director's Form I-290C, Notice of Certification. Although the regulation at 8 C.F.R. § 103.4 permits submission of a brief to the AAO within 30 days of the director's issuance of a Notice of Certification, neither counsel nor the petitioner has done so. Accordingly, we deem the record complete and ready for adjudication.

The AAO reviews these matters on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioning employer has failed to overcome the director's grounds for denial. Beyond the decision of the director, we find additionally that the petitioning employer has failed to establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.

#### *Applicable Law*

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)(i) states, in pertinent part, the following:

*General.* Under section 101(a)(15)(H)(iii) of the Act, an alien may be authorized to come to the United States temporarily to . . . receive training from, an employer, if petitioned by that employer. Under this nonimmigrant category, the alien may be classified . . . under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee . . . The employer must file a petition with the Service. . . .

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

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 regulation at 8 C.F.R. § 214.2(h)(7) states the following:

- (ii) *Evidence required for petition involving alien trainee—*
  - (A) *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.
  - (B) *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 why such training cannot be obtained in the alien's country and 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.
- (iii) *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.

### *The Proposed Training Program*

In his January 18, 2012 letter [REDACTED] the petitioning employer's chief medical officer, described the organization as a 357-bed regional tertiary-care, teaching, and research center. [REDACTED] explained that the petitioning employer has entered into a relationship with the Lebanese American University School of Pharmacy (LAU), located in Byblos, Lebanon, which will allow LAU's pharmaceutical trainees to receive training in the United States. As noted by [REDACTED] LAU's Doctor of Pharmacy (Pharm.D.) program is the only program located outside the United States that is accredited by the Accreditation Council for Pharmacy Education (ACPE), and in order to maintain that accreditation LAU's students must complete training rotations in the United States. [REDACTED] explained that the proposed training program would consist of four, month-long rotations, and that the beneficiary would be granted academic credit at LAU upon satisfactorily completing the four rotations.

According to [REDACTED], the pharmaceutical trainees would receive extensive training in hospital

pharmacy; review data and pharmaceutical safety policies; adhere to quality control standards; abide by applicable regulations and procedures; maximize quality care through patient medication review; support patient care with the goal of reducing complications, side effects, and adverse reactions; and conduct patient-focused care review.

The training program's first rotation, entitled "Hospital or Health System Pharmacy," would last four weeks and would take place at the petitioning employer's facility. During this rotation the beneficiary would apply the principles of hospital pharmacy management rules and regulations, distribution systems, patient-oriented pharmacy service, and evidence-based medicine. [REDACTED] provided a detailed breakdown explaining this rotation's objectives, the beneficiary's duties and responsibilities, and means of evaluation, and provided a list of training materials.

The proposed training program's second rotation, entitled "Ambulatory Care," would also last four weeks and take place at the petitioning employer's facility. During this rotation the beneficiary would implement and monitor cost-effective drug therapies for safety and efficacy in primary care and/or specialty clinic patient care environments. [REDACTED] also provided a detailed breakdown explaining this rotation's objectives, the beneficiary's duties and responsibilities, and means of evaluation, and provided a list of training materials.

The proposed training program's third rotation, entitled "Inpatient/Acute Care General Medicine," would also last four weeks, and would take place at the Overlook Medical Center, which is located in Summit, New Jersey. During this rotation the beneficiary would contribute to the care of patients with a variety of inpatient/acute care general medicine states. The beneficiary would build her general knowledge of disease states; apply principles of drug therapy to recommend treatment strategies; monitor patient outcomes; practice as an integral member of a multidisciplinary care-providing team; and communicate pharmaceutical knowledge to other health-care practitioners. [REDACTED] also provided a detailed breakdown explaining this rotation's objectives, the beneficiary's duties and responsibilities, and means of evaluation, and provided a list of training materials.

The proposed training program's fourth rotation, entitled "Community Pharmacy," would also last four weeks, and would take place at CVS Pharmacy in Cedar Grove, New Jersey. During this rotation the beneficiary would enhance her communication skills with patients and health care professionals, and her experiences would include patient triage, disease state management with a continuous focus on patient counseling, follow-up, and monitoring, as well as the distribution of medicine. [REDACTED] also provided a detailed breakdown explaining this rotation's objectives, the beneficiary's duties and responsibilities, and means of evaluation, and provided a list of training materials.

*The Proposed Training Program Would be Provided Primarily At, or By, An Academic or Vocational Institution*

The petitioning employer has partnered with LAU to provide U.S.-based pharmacy training to LAU pharmacy students so that they may fulfill the requirements of LAU's Pharm.D. program. The director noted that LAU would be ineligible to file this petition itself, as it is an academic institution, and found that approving a petition filed by one of its training sites, in this case the petitioning employer, "defies the regulatory intent that prohibits training provided primarily by an academic institution."

Neither counsel nor the petitioner has disputed the director's findings in this regard, and we agree that 8 C.F.R. § 214.2(h)(1)(ii)(E)(I) prohibits approval of this petition. The petitioning employer has submitted a printout of its website, where it describes itself, in part, as a teaching hospital, and ■■■■■ stated in his letter of support that the petitioner will train the beneficiary "consistent with the requirements of LAU's U.S. accreditation." The record is clear that the beneficiary would be a student in an academic or vocational program: the beneficiary would receive academic credit toward her Pharm.D. degree upon completion of the training program; the beneficiary would pay tuition to LAU in order to participate in the training program; the beneficiary would receive no remuneration from the petitioning employer; and the agreement between the petitioner and LAU makes clear that the beneficiary would not be the petitioner's employee and that the beneficiary would have no claim against it for any employment benefits. As the beneficiary clearly would be a student in an academic or vocational training program, and the petitioner is providing such a program, we find that the petitioner would be acting as an academic or vocational institution.

The petitioner has failed to establish that the proposed training program would not be provided primarily at or by an academic or vocational institution, as required by 8 C.F.R. § 214.2(h)(1)(ii)(E)(I).

*The Petitioning Employer Would Not Act as the Beneficiary's Employer*

The relevant portion of 8 C.F.R. § 214.2(h)(1)(i), which was set forth above, provides that an alien may be granted H-3 visa status in order to receive training from "an *employer*, if petitioned by that *employer*," and mandates that the "*employer* must file a petition with the Service" (emphasis added).

As noted above, the agreement between the petitioning employer and LAU makes clear that the beneficiary would not be an employee, and that the beneficiary would have no claim against the petitioning employer for any employment benefits. The beneficiary would receive no remuneration for participating in the training program, but would pay to participate in the program and receive academic credit for doing so. The record is therefore clear that the beneficiary would be a student, not an employee. For all of these reasons, we agree with the director's denial of the petition pursuant to 8 C.F.R. § 214.2(h)(1)(i), and neither counsel nor the petitioner disputes the director's denial of the petition on this ground.

The petitioning employer would not be the beneficiary's employer, as required by 8 C.F.R. § 214.2(h)(1)(i).

*The Petitioner Has Failed to Adequately Describe the Structure of the Proposed Training Program*

The regulation at 8 C.F.R. § 214.2(h)(7)(B)(I) requires an H-3 petitioning employer to describe the type of training and supervision to be given, and the structure of the training program. In denying the petition on this ground, the director noted that only two of the four proposed rotations would take place on the petitioner's premises and questioned the relationship between the petitioner and the institutions on whose premises the other two rotations would take place.

As discussed previously, the proposed training program's third rotation would take place at Overlook Medical Center in Summit, New Jersey and the fourth rotation would take place at CVS Pharmacy in Cedar Grove, New Jersey. However, because the record lacks documentation that clearly connects the petitioner to either of these entities, their relationship to the petitioner is unclear. Although the record contains an agreement between LAU and CVS Pharmacy, there is no corresponding agreement between the petitioner and CVS Pharmacy and it is therefore not clear that the petitioner would be the entity actually conducting this portion of the training program. In similar fashion, although there is an agreement between LAU and the Atlantic Health System, which owns the Overlook Medical Center, there is no such agreement between the petitioner and either the Atlantic Health System<sup>1</sup> or the Overlook Medical Center. Again, it is not clear that the petitioner would actually be conducting this portion of the training program. Due to this lack of clarity the director found that the petitioner had failed to establish that the third and fourth rotations are "part of a structured training program offered by [the petitioner]." As neither counsel nor the petitioner has submitted any rebuttal to these findings by the director, they have not been overcome.

Furthermore, beyond the decision of the director, we note that the petitioner stated on the Form I-129 that its proposed training program would last five months. Although the petitioner has described four, month-long training rotations, it has not explained what the beneficiary would be doing and how she would be supervised during the fifth month. For this additional reason, we find that the petitioner has failed to adequately describe the structure of its proposed training program.

The petitioner has failed to adequately describe the type of training and supervision to be given, and the structure of the training program, as required by 8 C.F.R. § 214.2(h)(7)(B)(1).

*Generalities with No Fixed Schedule, Objectives, or Means of Evaluation*

Beyond the decision of the director, we find that 8 C.F.R. § 214.2(h)(7)(iii)(A) mandates denial of this petition because the petitioner has failed to establish that its proposed training program does not deal in generalities with no fixed schedules, objectives, or means of evaluation. Although the proposed training program lasts five months, the petitioner has only described a four-month long program. It is not clear what the beneficiary would be doing and how she would be supervised during the fifth month of the program.

The petitioner is not required to submit an exhaustive breakdown of what the beneficiary would be doing during every minute of its five-month training program. However, in this case the petitioner has provided no information regarding the fifth month of its program, which is twenty percent of the

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<sup>1</sup> As noted by the director, the agreement between the Atlantic Health System and LAU contains an "Agreement Appendix" signed by the petitioner, but not by a representative of the Atlantic Health System, and it is not clear by what authority the petitioner signed this Agreement Appendix. However, the petitioner's authority to sign the Agreement Appendix is not relevant: even if we assume the petitioner was authorized to sign it, the Agreement Appendix does not discuss the third rotation of the training program that would be provided by the Atlantic Health System via its Overlook Medical Center and does not establish that the petitioner would actually be conducting this portion of the training program.

program's duration. As a result of this lack of information, the petitioner has failed to establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation, as required by 8 C.F.R. § 214.2(h)(7)(iii)(A). For this additional reason, the petition may not be approved.

*Conclusion*

The petitioning employer has failed to overcome the director's grounds for denial and has not established that its proposed training program would not be provided primarily at or by an academic or vocational institution; that the beneficiary would be employed by the petitioner; and that it adequately described the structure of the training program. Beyond the decision of the director, the petitioner has also failed establish that its proposed training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation.<sup>2</sup> Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(iii) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). It has not met that burden and the director's decision will remain unchanged.

**ORDER:** The director's decision, dated February 8, 2012, is affirmed. The petition remains denied.

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).