

H-3 Alien Trainees

GENERAL

Aliens seeking to enter the United States for training in any field are generally classifiable as H-3 nonimmigrants (see exceptions and restrictions below). However, petitioning employers may not use H-3 classification for training programs primarily designed to provide productive employment, i.e., where services performed by trainees will benefit their U.S. companies and/or where authorized U.S. workers would be employed but for the trainees' services. There is no statutory limit on annual H-3 admissions to the U.S.

Restriction: H-3 status is not appropriate for graduate education, including medical training. Practicing physicians require J-1 or H-1B status. Medical students may qualify for H-3 under special circumstances in approved hospital training programs.

DURATION

H-3 nonimmigrants will be admitted for the period of time necessary to complete the training specified in approved H-3 petitions, not to exceed two years.

REQUIREMENTS

Petitioning employers or sponsors must demonstrate that:

- Proposed training is not available in the alien beneficiary's home country
- Beneficiary will not be placed in a position, which is in the normal operation of the business, and in which citizens and resident alien workers are regularly employed
- Beneficiary will not be productively employed except as incidental/necessary to training
- Training will benefit beneficiary in pursuing a career outside the U.S.

PROHIBITIONS

A training program will not qualify if:

- It lacks fixed schedule, objectives or means of evaluation
- It is incompatible with nature of petitioner's business or enterprise
- The beneficiary already has substantial training/expertise in proposed field of training
- Knowledge/skill to be acquired from training is unlikely to be used outside of U.S.
- Productive employment exceeds what is incidental and necessary to training
- It primarily recruits and trains aliens to staff of domestic operations in the U.S.
- It lacks physical plant and sufficiently trained manpower to provide specified training
- It extends total allowable practical training period authorized for a nonimmigrant student

Exception: Structured, professional programs that offer practical training and hands-on experience in educating special needs children are not subject to all of the standard H-3 requirements and prohibitions. A maximum of 50 aliens per year may be admitted in H-3 status to attend special programs lasting no longer than 18 months.

H-3 PROCEDURE

Step One

Petitioning employer or sponsor files Form I-129 (including H supplement) with USCIS Service Center having jurisdiction over the training area. Multiple beneficiaries can be included if the nature, duration, and location of training are identical. Petitions must include:

- Description of training and supervision to be given, specifying structure of the program
- Proportion of time to involve productive employment
- Number of hours to be spent each in classroom instruction and on-the-job training
- Description of career abroad for which training will prepare the alien trainee(s)
- Why training (a) is unobtainable in alien's country and (b) must be obtained in U.S.
- Source of any remuneration to be received by alien trainee(s)
- Description of any benefit that will accrue to petitioner for providing specified training

Step Two

Based on approval of H-3 petition (notified to petitioner on Form I-797C), an alien must apply on Form DS-156 at the nearest U.S. consulate abroad for a visa to travel to the U.S. (Canadians may present evidence of their approved status directly to USCIS inspectors at U.S. ports of entry). In cases of multiple beneficiaries, USCIS will notify respective consulate of each H-3 trainee. For the purpose of obtaining a visa, an alien may be required to convince a consular officer of intent to enter the U.S. for a temporary *period* of time and provide evidence of permanent ties to home country that support this intent.

DEPENDENTS

Spouses and children of H-3 principal trainees are entitled to H-4 status with the same restrictions as the principal. Employment is prohibited in H-4 status. H-4 dependents are permitted to pursue courses of study, but in this status are not eligible for practical training.

Contact our office to speak with a member of our Immigration Group.