

H-3 (TRAINEE) PROGRAM DESCRIPTION

The following memo provides general information on the process of applying for H-3 Nonimmigrant Trainee status.¹ H-3 status allows a foreign national to enter the United States for the purpose of receiving training or instruction (other than graduate medical education/training).² Typically, multinational companies use this status to train prospective or existing employees based at their foreign offices in the methods and procedures of their U.S. operations. It can also be used to provide information and training to foreign nationals who work abroad for related or client companies where such knowledge is necessary to the success of their career.

DURATION OF STAY

Unlike B-1 and Visa Waiver statuses that only allow short stays in the United States, H-3 status will allow foreign employees to remain in the United States for a longer period. The United States Citizenship and Immigration Services (“USCIS”) may grant approvals of up to 2 years. However, to minimize the risks of a delay that would be caused if the USCIS requests additional information or evidence, we generally recommend that the initial H-3 petition request no more than a year, and then file a separate request for an extension of stay at a later time if additional time is required. Once the 2-year period has been reached, no extensions, change of status or readmission is possible until the foreign national has been absent from the United States for at least 6 months. This limitation does not apply when the H-3 visa holder was in the United States seasonally, intermittently or for an aggregate of 180 days or less in each calendar year.

DEPENDENT APPLICATIONS

H-3 trainees may be accompanied by dependents (spouse and children under 21 years of age). There is no separate USCIS filing required for the dependents. Once the USCIS has approved the H-3 petition, they will be qualified to apply for H-4 visas at a U.S. Embassy or consulate as dependents at the same time as, or following, the principal alien’s application for an H-3 visa. Spouses of H-3 trainees are not eligible to receive work authorization in the United States.

REGULATORY CRITERIA

H-3 is a heavily scrutinized category, and the USCIS often issues Requests for Evidence (RFEs). It is critical to demonstrate that the H-3 classification is not being used to “primarily provide productive employment.” The filing submitted to the USCIS must include documentation addressing each of the regulatory criteria provided on the following page.

¹ This memo is intended for clients of Goeschl Law Corporation, and is for informational purposes only. While we hope this information is useful as general background information, we cannot warrant its applicability, accuracy, or completeness, given the many intricacies of specific factual circumstances and scenarios, and the frequent changes to immigration policy and procedures.

² Note that there is an H-3 subcategory set aside for Special Education Exchange Visitors to receive practical training and experience in the education of children with physical, mental, or emotional disabilities. This subcategory is subject to an annual quota/cap of fifty visas per year, and the maximum length of the program is limited to eighteen months.

- (1) The training is unavailable in the foreign national's home country;
- (2) The foreign national will not be placed in a position where a U.S. citizen or permanent resident is regularly employed;
- (3) There will be no productive employment unless it is incidental and necessary to the training; and
- (4) The training will benefit the foreign national in pursuit of a career outside the U.S.

REQUIRED DOCUMENTS AND INFORMATION

The petitioning company must provide a detailed description of the training program, including:

- The type of training to be provided, the nature and extent of the supervision to be given, and the training program's structure;
- The proportion of time devoted to productive employment;
- The number of hours per week to be spent in classroom setting;
- The number of hours per week to be spent in on-the-job training;
- The career abroad for which the training will prepare the trainee;
- The reasons why the training cannot be obtained or conducted in a foreign country, and why it is necessary for the foreign national to be trained in the United States;
- Confirmation that the foreign national is qualified for training (but not overqualified); and
- The source of any remuneration to be received by the trainee as well as the benefit that the U.S. employer will gain from providing the training.

To initiate the H-3 process, please see our H-3 Employer and Employee Questionnaires for a checklist of required documents and information.