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The H-3 Trainees

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H-3 visas are available to alien trainees who are usually foreign workers of U.S. companies or institutions, who come to the U.S. for a temporary period, primarily to participate in an established training program.

It is the U.S. company which files a petition to the INS.

Upon its approval, the foreign trainee brings this approval notice to the U.S. embassy/consulate in his home country for the issuance of the H-3 visa. This visa is issued for a maximum of two (2) years. Hence, the training program must be for a length of time not exceeding this period.

An alien who has been in the U.S. for two years with the H-3 visa cannot extend his stay or return to the U.S. under an H or L visa unless it is established that he has been physically present outside of the U.S. for six (6) months prior to the filing for change of status or a new petition by the U.S. company, as the case may be. The alien trainee can be accompanied by his spouse and minor children under H-4 visas, provided they do not work in the U.S. Student visas are also available to these dependents.

There are certain requirements considered by the INS before it approves petitions for H-3 trainees. These are the following:

- (1) There must be an established company training program which must be formal in structure, with an organized curriculum, books and study materials, a syllabus and evaluation method of the alien trainees.
- (2) The purpose of the training should be to provide new instruction or training to the trainee and not merely to enhance his previously-acquired skills. The completed training should be for his eventual overseas assignment and not for the alien's employment in the trainer's U.S. offices. The overseas assignment is not limited to the trainer's operations abroad, as when the trainer just intends to develop a network of foreign contacts who are well acquainted with the operations of the U.S. trainer-company.
- (3) The alien trainee cannot engage in productive employment in the U.S., even if it is part of the training program if such will displace a U.S. worker. On-the-job-training is allowed only if it is incidental to the training and is restricted to on-site observation, orientation and continual supervision.
- (4) The training must not be available to the alien's home country. The U.S. trainer must show however, that the training is useful to the alien's home country even if no comparable training is available.
- (5) The alien must maintain his foreign residence to prove his intention to return abroad.

If H-3 visa is not applicable, the U.S. company may consider other visa categories, such as the B-1 for business visitors, J-1 if there is no established training program, F-1 or H-1 if the alien will engage in productive employment, or L-1 for intracompany transfers of the foreign workers.