



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

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

In Re: 22610083

Date: OCT. 19, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-3)

The Petitioner seeks to temporarily accept the Beneficiary as an “apprentice/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 of the Vermont Service Center denied the petition, concluding that the Petitioner had not demonstrated that (1) the proposed training program met the regulatory requirements; (2) the proposed training was unavailable in the Beneficiary’s home country; (3) the Beneficiary does not already possess substantial training and expertise in the proposed field of training; and (4) the Beneficiary will not be placed in a position which is in the normal operation of the business.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(iii) of the Act describes an H-3 nonimmigrant as a foreign national “. . . who is coming temporarily to the United States as a trainee . . . in a training program that is not designed primarily to provide productive employment. . . .”

The regulations define the H-3 nonimmigrant at 8 C.F.R. § 214.2(h)(7)(i) as follows:

*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, at 8 C.F.R. § 214.2(h)(7). They are:

- “Evidence required for petition involving alien trainee” - at 8 C.F.R. § 214.2(h)(7)(ii)(A) (“Conditions”) and (B) (“Description of training program”). The conditions subparagraph specifies four training attributes that the petitioner must demonstrate with regard to the proposed training program; the training-program description provisions specify six items of information that the petitioner must provide about the proposed training.
- “Restrictions on training programs for alien trainee” - at 8 C.F.R. § 214.2(h)(7)(iii). This section identifies six types of training programs that cannot be approved as a basis for an H-3 trainee petition.

Subparagraph (A) of the section on required evidence, at 8 C.F.R. § 214.2(h)(7)(ii), states the conditions as follows:

*Conditions.* The petitioner is required to demonstrate that:

- (1) The proposed training is not available in the [foreign national]’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 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 [foreign national]'s country and [(b)] why it is necessary for the [foreign national] 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 [foreign national] trainee*, provides a list of characteristics that 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 [foreign national] 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 [foreign nationals] 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.

## II. BACKGROUND

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner identified itself as a restaurant. It claimed that it intends to employ the Beneficiary as an H-3 trainee on a part-time basis for a period

of 24 months as a sous chef. In its supporting documentation, the Petitioner indicated that its kitchen and restaurant have earned one Michelin Star and are “at the forefront of sustainable avant guard cooking.” The record indicates that the Beneficiary, who has approximately eight years of experience working as a chef de partie, prep cook/line cook, and culinary extern at various restaurants in the United States and Taiwan, holds a bachelor’s degree in culinary science and an associate’s degree in culinary arts from The Culinary Institute of America.

### III. ANALYSIS

In denying the petition, the Director determined that the Petitioner had not sufficiently described the proposed training program as required under 8 C.F.R. § 214.2(h)(7)(ii)(B), concluding that the proposed training program did not meet the regulatory requirements because it dealt in generalities. The Director also determined that the Petitioner had not demonstrated that the training met two of the four training attributes outlined under 8 C.F.R. §214.2(h)(7)(ii)(A), because the record did not demonstrate that the proposed training was unavailable in the Beneficiary’s home country and that the Beneficiary will not be placed in a position which is in the normal operation of the business. The Director also determined that the record did not demonstrate that the Beneficiary did not already possess substantial training and experience in the field.

On appeal, the Petitioner submits additional evidence and asserts that the Director’s decision was erroneous. Upon review of the record in its entirety, we conclude that the Petitioner has not established eligibility for the requested benefit.

#### A. Nature of the Proposed Training Program

The regulation at 8 C.F.R. § 214.2(h)(7)(ii)(B)(I) requires the Petitioner to submit a statement describing “the type of training and supervision to be given, and the structure of the training program,” and 8 C.F.R. § 214.2(h)(7)(iii)(A) precludes approval of a training program which “[d]eals in generalities with no fixed schedule, objectives, or means of evaluation.”

The Petitioner initially stated that the Beneficiary’s training would build on the foundational and intermediate skills she acquired during her studies at The Culinary Institute of America. The Petitioner indicated that the Beneficiary would receive management training as well as training in the execution of the Petitioner’s proprietary recipes and methods for preserving food. The Petitioner claimed that 50% of her training would be devoted to productive employment, as most of her training would take place during “service” hours at which time most of the restaurant’s food was prepared. Regarding her training composition, the Petitioner claimed that she would receive instruction from the Petitioner’s executive chef and chef de cuisine for five hours per day, with an additional five hours per day devoted to on-the-job training where she would execute recipes and prepare dishes.

The Director issued a request for evidence (RFE), noting that the Petitioner’s initial description of the training was too general. Specifically, the Director noted that the description of the proposed training provided neither a meaningful account of the Beneficiary’s day-to-day activities during the entire training period nor an adequate description of the complete training program and schedule, and did not sufficiently explain why the proposed training would take two years to complete. The Director requested that the Petitioner provide additional evidence such as copies of lesson plans and training

materials for this training program or previous training programs; copies of the Petitioner's standard trainee performance appraisal guidelines and sample appraisals from former students/trainees; a detailed account of the training program describing the classroom training, practical exercises, and on-the-job training; and pamphlets, brochures, website excerpts, or other printed material outlining the nature of the training.

In response, the Petitioner claimed that the proposed training was entitled "Advanced Culinary Training: Leadership Development, Advanced Cooking Skills, Creative Design and Process, Proprietary Preservation Techniques," and provided an expanded overview of the program. The Petitioner stated that the program's intent was to prepare the Beneficiary to "take on a leadership role in similar Michelin-starred institutions, developing technical skills required to execute consistently at a high level as well as [the Petitioner's] approach to critical thinking and procedural skills to creatively design, test, and implement new dishes and all of their components." (Emphasis in original.)

Regarding the two-year training period, the Petitioner stated that the training would be divided into four six-month modules for each subset (advanced cooking skills, creative design and process, proprietary preservation techniques, and leadership development), operating in two stages per module. Specifically, the Petitioner claimed that the first two months of each module would consist of hands-on training and reading materials "to understand the educational underpinnings of each process," and four months of implementation.

The Petitioner provided the following overview for each of the four modules:

The Advanced Cooking Skills Module includes training for:

- Advanced Knife Skills, including butchery of local product unique to the  Region from the
- Comprehensive Pastry Skills for both plated and baked goods
- Entremet Station Execution

The Creative Design and Process Module includes training for:

- Process of researching and identifying of local products and goods
- Methods of evaluation to understand elements of local and regional products
- A variety of approaches to formulate recipes that balance preferences
- Procedures to test and evaluate implementation of recipes
- Methods to troubleshoot issues with composed dishes

The Proprietary Preservation Techniques Module includes training for:

- Preparation of local ingredients for preservation
- Assessment of local ingredients for chemical compounds
- Access to proprietary fermentation recipes
- Procedural training to test, measure, evaluate, and improve recipes
- Mechanical training to maintain atmospheric conditions

The Leadership Development Module includes training for:

- Different approaches to kitchen organization
- Strategies for streamlining prep schedules and operational bottlenecks
- Alternative methods of management in different settings from different global and regional strategies
- Communication strategies to ensure follow-through and diligent follow-up

The Petitioner indicated that its hours of operation, when it was open to the public, were Wednesday through Sunday, 5:30 p.m. to 10:00 p.m., and that kitchen staff typically reported for work at 1:00 p.m. Regarding the Beneficiary's training schedule, the Petitioner stated that she would report for training from 10:00 a.m. to 5:00 p.m. on Tuesdays and from 10:00 a.m. to 3:00 p.m. on regular working days.<sup>1</sup> The Petitioner stated that on "regular working days," a portion of her training would "be carried out during normal business hours as it overlaps with the regular operations and as necessary to practice and execute specific modules for training."

The Petitioner claimed that the Beneficiary's evaluation would be conducted by Executive Chef [redacted] [redacted] as well as Chef de Cuisine [redacted] and Sous Chef [redacted] who would implement a three-tiered system of evaluation. The Petitioner indicated that the Beneficiary would be rated and evaluated through (1) a final product or test to demonstrate her proficiency in the skill, (2) her ability to maintain consistency and improve consistency throughout the duration of the module, and (3) a test to ensure a comprehensive understanding of each module.

In denying the petition, the Director determined that the Petitioner's RFE response had not overcome the deficiencies noted in the training program's description, and further noted numerous unresolved discrepancies in the Petitioner's descriptions of the training program. Upon review, we agree with the Director's finding that the Petitioner's description of the training program does not satisfy 8 C.F.R. § 214.2(h)(7)(ii)(B)(I) or 8 C.F.R. § 214.2(h)(7)(iii)(A). While the regulations do not require a petitioner to account for every minute, or even every hour, of a beneficiary's time, the plain language of the regulations requires a petitioner to sufficiently describe a training program's structure, the type of training, and the supervision to be given, and to also establish that the program does not deal in generalities. The description, therefore, must be meaningful. However, the Petitioner's description does not adequately convey the essential aspects of the program.

The Petitioner intends to provide training to the Beneficiary through a combination of instruction and on-the-job training. Regarding the instruction portion of training, the Petitioner first indicated that the Beneficiary would receive five hours of instruction per day from its executive chef and chef de cuisine. In response to the RFE, however, the Petitioner claimed that the Beneficiary would receive instruction for the first two months of each module in the form of "hands-on training and reading materials" without further explanation. Similarly, with regard to on-the-job training, the Petitioner first claimed that five hours per day of training would be devoted to executing recipes and preparing dishes during the restaurant's service hours, but in response to the RFE it claimed that the last four months of each instructional module would be devoted to "implementation." Based on these unresolved discrepancies, the structure of the training program is unclear. It is incumbent upon the petitioner to

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<sup>1</sup> "Regular working days" were not further defined by the Petitioner.

resolve such inconsistencies by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Moreover, the manner in which instruction would be administered to the Beneficiary is unclear. Aside from broadly identifying the topics to be covered in each module, the Petitioner did not articulate any details regarding the nature of the Beneficiary's instruction beyond listing the topics to be covered, and it did not supplement the record with lesson plans or documentation outlining the manner in which the instruction would be presented as requested in the RFE. Although it stated that a portion of the training would be "hands-on" and would involve reading materials, the Petitioner did not identify any training materials to be used beyond stating that the Beneficiary would receive leadership instruction and learn how to execute the Petitioner's proprietary recipes and methods of food preservation. The training overview lacked specific details regarding the manner in which the subject material would be presented. Further, the Petitioner did not explain or provide details regarding the type of instruction the Beneficiary would receive or her level of involvement with regard to the tasks associated with each part of implementation or "hands-on" training. This omission is critical, as the tasks listed in each of the four instruction modules are vaguely stated. For example, the leadership development module states that the Beneficiary would receive training in different approaches to kitchen organization, strategies for streamlining prep schedules and operational bottlenecks, alternative methods of management in different settings from different global and regional strategies, and communication strategies to ensure follow-through and diligent follow-up. In addition to not distinguishing the instructional and implementation portions of this particular module, it is unclear exactly what the Beneficiary will be doing and learning during this module. Moreover, although the Petitioner identified its executive chef, chef de cuisine, and sous chef as the Beneficiary's trainers, their level of involvement with her training and instruction is unclear.

Upon review, we conclude that while the training topics identified by the Petitioner appear to be reasonably connected to the stated training-objectives, the stated training goals are vague and broadly stated. The Petitioner's statements about the proposed training program lack content that is sufficiently detailed and specific to establish that the Beneficiary's training would be governed by a fixed schedule, already determined by specific time periods designated for a specific training, and also characterized by objectives or means of evaluation. In addition to the inconsistencies regarding the training's structure and schedule, the means of evaluation are likewise unclear. For example, the training overview vaguely indicated that the Beneficiary would be rated and evaluated through a final product or test to demonstrate proficiency, a test to ensure a comprehensive understanding of each module, and her ability to maintain and improve consistency throughout the duration of each module. It is unclear, however, who would administer the identified "tests" and evaluate her "consistency."

Moreover, as discussed briefly above, the nature of the Beneficiary's supervision is likewise unclear. The Petitioner claimed that the Beneficiary would receive instruction and training from its executive chef, its chef de cuisine, and its sous chef. The Petitioner, however, did not explain or clarify the level of each chef's involvement in the instructional and implementation portions of the training, other than claiming on appeal that the Beneficiary and the chefs will have weekly meetings. Given that three instructors are identified, it is unclear why each instructor is not assigned to a designated portion of the training, such that we can ascertain who is responsible for the Beneficiary's training on a specific day or topic. It is unclear, therefore, how the Beneficiary's work will be evaluated as claimed by these three individuals.

On appeal, we observe that the Petitioner provides new evidence regarding the structure and composition of the training program. The Petitioner, however, was put on notice by the Director to submit evidence describing the structure of the training program and the nature of the supervision to be given and was given a reasonable opportunity to provide this evidence in response to the Director's RFE. The Petitioner does not articulate on appeal why this evidence was not reasonably available at the time of the RFE. As such, we are not required to consider this evidence now on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Regardless, even if we consider the evidence submitted on appeal, the Petitioner's division of the training program into "Year 1" and "Year 2" further complicates our understanding of the program's structure. The inconsistencies regarding the changes to the amounts of time to be devoted to each aspect of the proposed training, coupled with the undefined structure of the training and means of evaluation for the Beneficiary, raise questions regarding the true nature of the training program. As noted above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Given the inconsistencies in the record regarding the nature of the training plan, the method of instruction, and the means of evaluation of the Beneficiary's progress, we conclude that the training program deals in generalities with no fixed schedule, objectives, or means of evaluation. For the above stated reasons, we find that the evidence of record satisfies neither 8 C.F.R. § 214.2(h)(7)(ii)(B)(1) nor 8 C.F.R. § 214.2(h)(7)(iii)(A) or (B).

#### B. Availability of the Proposed Training

The Director also determined that the Petitioner had not provided sufficient evidence to satisfy the condition at 8 C.F.R. § 214.2(h)(7)(ii)(A)(1), which states that the H-3 petitioner "is required to demonstrate" that "[t]he proposed training is not available in the alien's own country."

The Petitioner argues that the proposed training is unavailable in the Beneficiary's home country of Taiwan, primarily because there are no "New American" or "American" Michelin-rated restaurants in the country. It further argues that its restaurant has access to a wide variety of uniquely sourced products used in its proprietary recipes and therefore the proposed training would not be available in Taiwan due to the unavailability of such products.

This statement does not sufficiently demonstrate that the proposed training is not available in Taiwan. While the Petitioner submitted a list of Michelin-rated restaurants in Taiwan, this evidence does not specifically address the nature or availability of the training program. We acknowledge that there may not be a similar Michelin-rated restaurant providing the same type of cuisine as the Petitioner in Taiwan. The issue before us, however, is whether the Petitioner's proposed training, which it claims consists of (1) advanced cooking skills, (2) creative design and process, (3) preservation techniques and (4) leadership development is available in Taiwan. Although we acknowledge that a portion of the Beneficiary's training will involve instruction on the Petitioner's proprietary food preservation methods and recipes, there is insufficient evidence to demonstrate, as noted by the Director, that such

proprietary techniques cannot be implemented or duplicated in Taiwan. Additionally, while the Petitioner asserts that many of its uniquely sourced products are not available in Taiwan, the Petitioner has not explained how the lack of availability of certain food items would preclude one from learning advanced knife skills or how to execute an entremet station. Finally, the four modules of the Petitioner's proposed training refer to general culinary and leadership skills that seem to be universally available.

The Petitioner's blanket statement that the proposed training is not available in Taiwan is not substantiated, and falls short of establishing that no public or private organizations or restaurants in Taiwan offer similar training to that currently offered to the Beneficiary. Absent additional evidence to support these assertions, we conclude that the Petitioner has not demonstrated that "[t]he proposed training is not available in the alien's own country," as specified at 8 C.F.R. § 214.2(h)(1)(ii)(E).

### C. Substantial Training and Expertise in the Proposed Field of Training

The regulation at 8 C.F.R. § 214.2(h)(7)(iii)(C) forbids approval of an H-3 petition filed on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training.

The Beneficiary's educational background and work experience were briefly discussed above. In denying the petition, the Director determined that the Beneficiary's bachelor's degree in culinary arts, eight years of experience working in the field, and one year of practical training at the Petitioner's restaurant demonstrated that she already possessed substantial training and experience in the field.

On appeal, the Petitioner acknowledges the training received to date by the Beneficiary, but claims that her previous work experience is not relevant because the proposed training program involves training as a sous chef. The Petitioner argues that the Beneficiary's previous positions in the industry did not afford her the opportunity to learn and execute the complex recipes and methods performed by a sous chef at the Petitioner's restaurant. Specifically, the Petitioner points out that positions previously held by the Beneficiary, such as chef de partie, are entry-level positions and would not have afforded the Beneficiary an opportunity to learn the advanced cooking methods offered in its training.

As noted above, the subject matter of the proposed training program has not been sufficiently articulated, such that we can determine that the training the Petitioner intends to provide is different than that already possessed by the Beneficiary. For example, the Petitioner's training program includes a leadership development module indicating that the Beneficiary will receive training in areas such as leadership and kitchen organization. However, her resume indicates that during her practical training with the Petitioner, she oversaw "all areas of kitchen operation," and further indicates that she previously trained and instructed new staff in proper food preparation, storage, use of kitchen equipment, sanitation and safety at other restaurants. Moreover, the advanced cooking skills module of the proposed training indicates that the Beneficiary will receive instruction in butchery, pastry, and entremet station execution (which involves vegetable, soup and stock preparation), but her resume indicates she already has experience in all of those areas. The Petitioner has not demonstrated that the Beneficiary does not already possess substantial training and expertise in the proposed field of training.

The Director also noted that the Beneficiary's experience at  a three-star Michelin

restaurant in [redacted], was significant given that she trained employees and instructed new staff during her tenure. Again, as the Petitioner's training includes a module for leadership development, it is unclear how the Petitioner's proposed training would differ from training and experience she already possesses in this area. On appeal, the Petitioner argues that its restaurant, which uses numerous international products in preparation of its [redacted] cuisine, is distinguishable from [redacted] a traditional [redacted] kitchen. The Petitioner further argues that [redacted] follows the "Brigade de cuisine" system, a timeline for staff development would not have allowed the Beneficiary to rise in rank and responsibility to a high-level position requiring the level of training the Petitioner's training program would provide, and further claims that the Beneficiary lacked experience in numerous areas when she reported to its restaurant for her practical training. We note, however, that the Beneficiary's ultimate position within the organizational hierarchy at [redacted] or the Petitioner's restaurant is not in question here; rather, the issue before us is whether she already possesses substantial training and expertise in the proposed field.

Again, the Beneficiary's resume indicates that she has eight years of experience working as a chef de partie, prep cook/line cook, and culinary extern at various restaurants in the United States and Taiwan, as well as degrees in culinary science and culinary arts. Her resume further states that she has been "trained in a wide variety of advanced cooking and baking techniques," is experienced in product formation and recipe development, and has an understanding of traditional and modern preservation methods. Although the Petitioner's arguments regarding the differences between the Beneficiary's training and expertise and the knowledge to be imparted via the proposed training program are noted, the Petitioner has not sufficiently articulated the nature of its training program or the manner in which its four proposed modules of training will impart knowledge to the Beneficiary that she does not already possess.

Based on her education, training, and employment (both with the Petitioner and with other employers), the evidence of record does not establish that the skills the Beneficiary already possesses would differ substantially from the training proposed here. Accordingly, the evidence of record does not satisfy 8 C.F.R. § 214.2(h)(7)(iii)(C).

#### D. Position in the Normal Operation of the Business

The provision at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2) places upon the Petitioner an affirmative burden "to demonstrate" that 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."

The Director determined that while the Petitioner had provided the Beneficiary's training hours and its normal business hours of operation in response to the RFE, it did not provide a description of the normal operations of its business. The Director also noted that despite providing an organizational chart demonstrating its staffing composition, the Petitioner had not provided a description of each employee's position, as requested.

On appeal, the Petitioner states that "[the Beneficiary's] hours will be unique to her training program, starting in the mornings (between 9am and 10 am) and ending in the early evenings (between 5pm and 6pm) depending on the day of the week. Outside of circumstantial *Entremetier* training that requires in-service training due to cost reasons, all trainings will be committed to non-operations related

educational trainings.” The Petitioner also provided descriptions of its general manager, chef de cuisine, and sous chef positions; however, because these descriptions were requested in the RFE and the Petitioner declined to submit them, we will not consider them for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766 (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); *see also Matter of Obaighena*, 19 I&N Dec. at 533.

Upon review, we concur with the Director’s determination. First, the totality of the evidence does not provide a reliable, substantive account of how the Beneficiary would spend her training time. The training description provides the hours during which her training will be conducted and divides the proposed training into four modules; however, the varying accounts of the breakdown of time to be devoted to on-the-job duties during each module, from five hours per day to four months exclusively devoted to “implementation,” have not been clarified. Moreover, while the Petitioner provided an overview of topics to be covered and items to be executed in each module of training, it did not clarify to what extent certain training topics or assignments overlapped or coincided with its normal business operations. For example, during the six months devoted to the advanced cooking skills module, the Petitioner stated that the Beneficiary would receive training in advanced knife skills, including butchery of local product, comprehensive pastry skills for both plated and baked goods, and entremet station execution. Also, the Petitioner affirmatively stated that the Beneficiary’s training would “be carried out during normal business hours as it overlaps with the regular operations and as necessary to practice and execute specific modules for training,” contradicting its claim on appeal that “all trainings will be committed to non-operations related educational trainings,” aside from circumstantial *entremetier* training. Therefore, given that her training hours overlap with the hours the kitchen staff reports to work to begin food preparation for evening dinner service, it appears that that Beneficiary’s butchering and her execution of the entremet station, which typically involves vegetable, soup and stock preparation, directly contributes to some extent to the normal food preparations undertaken each day by the kitchen staff and thus fall within the restaurant’s normal business operations.

The Director also noted that the Beneficiary’s hourly wage was equal to the salary of the Petitioner’s other sous chef, [REDACTED]. In response, the Petitioner claimed that although [REDACTED] annual salary was equivalent to the hourly wage of the Beneficiary at the time of filing, [REDACTED] salary has since been increased and is much higher than the Beneficiary’s hourly compensation for her trainee position. Nevertheless, the fact that the Beneficiary was to receive the same amount of compensation, on an hourly basis, as the Petitioner’s other sous chef at the time of filing, and the Petitioner’s failure to articulate the nature of its business operations and the role of the Beneficiary’s training therein, prohibits us from determining that 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.

In sum, the Petitioner acknowledged that the Beneficiary’s training will be carried out during normal business hours as it overlaps with its regular operations, and did not further explain the extent to which her training is conducted outside of normal business operations as requested. It therefore cannot be concluded that she “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” as set forth at 8 C.F.R. § 214.2(h)(7)(ii)(A)(2).

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.