

The H-3 visa is a nonimmigrant visa that allows aliens to attend a paid traineeship in the U.S. H-3 visas are unlimited in numbers and allow these trainees to get paid while they are training. These visas are not to be used as stepping stones to nonimmigrant visas such as H-1B, or for permanent residency.

CFR Sec. 214.2(h)(7) makes it very clear that H-3 visas are not to be used to recruit and train aliens for domestic operations in the United States. There is no ambiguity in that regulation.

Attorney Frank Nelson is advising companies to break the law in order to circumvent the yearly cap on H-1B visas. Of course like most of our immigration laws, there is almost no enforcement and therefore almost no compliance.

This is the first time I have ever heard about H-3 visa being abused in this fashion, although I have heard about scams where aliens were promised an H-3 visa for a fee, but never got one. I don't have any information about how widespread the practice is that the attorney describes below.

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H-3 Training: A Possible Solution to the H-1B Crisis

Atty. Frank Nelson

EMPLOYERS all over the country are feeling the pinch of the current H-1B crisis. U.S. workers simply are not available to fill all of the available jobs in this country, and now that the U.S. has run out of H-1B visas, employers are unable to hire foreign workers to fill badly-needed positions. Congress is currently discussing the possibility of making more H-1Bs visas available, but there is no guarantee that this will happen - or if it does, that Congress will make enough visas available to satisfy the current shortage.

H-3 training offers a possible solution for at least some employers. H-3 status will allow a qualified alien to stay in the United States to receive training from the employer. If, at a later time, the employer decides to hire the alien as an employee, the employer can petition the alien for H-1B classification. Since there is no quota for H-3 classification, visas are always available. This means that an alien can qualify for, and receive

H-3 classification and remain in the U.S. even if there are no H-1B visas available. If that same alien is still in the U.S. in H-3 status (or any other status) when H-1B visas again become available, the alien can change his/her classification to H-1B.

What is H-3 classification?

H-3 is a nonimmigrant classification for an alien 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.

How many H-3s are issued per fiscal year?

There is no quota for H-3 visas.

Who is qualified for H-3 classification?

An alien who does not possess substantial training and expertise in the proposed field of training. A bachelor's degree is not required; any alien, either in the U.S. or abroad, can potentially qualify for H-3 training.

How long is H-3 valid?

H-3 status is valid for a maximum of two years. After two years, no extension, change of status, or readmission to H status will be granted unless the alien resided and is physically present out of the U.S. for at least 6 months.

If I have not maximized my stay of two years in H-3 classification, can I change my status?

Yes. If an alien has not been in H-3 status for two years, and is still in lawful nonimmigrant status, a change of status petition to an applicable nonimmigrant category, such as H-1B, may be filed on the alien's behalf.

Can I include my family?

Yes, the trainee's family (spouses, unmarried children under the age of 21) may also be permitted to live in the U.S. during the period that the H-3 visa is in effect. They will be admitted in H-4 status. H-4 dependents cannot engage in employment while on H-4 status.

What are the requirements for H-3?

Perhaps the most significant requirement for an H-3 petition is the

existence of a training program. The program does not have to be in existence for any particular period of time, but must be in existence at the time the petition is filed. In addition to providing the details of the training program, the employer must provide a company profile, income tax returns, organization chart, and other information pertaining to the company.

How long does the process take?

The current H-3 processing time is approximately 2-3 months. Premium processing, which is optional and requires an additional filing fee, takes 15 days from the time CIS receives the filed application.

How can this help me or my employee?

That will depend on your particular situation; the H-3 program cannot help everyone. However, if it fits your particular situation, H-3 status can keep an alien here in the U.S., working (as a trainee) for an employer, for up to two years, and the H-3 trainee can still change status again to some other nonimmigrant status, such as H-1B. This could allow at least some aliens to stay in the U.S. in H-3 status with one employer, then change to H-1B status with another employer when H-1B visas become available again. Under some circumstances, it is even possible to change status from H-3 to H-1B without changing employers.

Attorney Nelson has more than fifteen (15) years of experience as a lawyer and has significant experience in all areas of Immigration Law. Atty. Frank Nelson's office is located at 70 South Lake Avenue Suite 1110 Pasadena, CA 91101. To make an appointment call (626)683-3451.

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