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H3 CONDUCTIVE EDUCATION VISA

The H-3 Special Education Exchange Visitor Program is a unique visa available for participants in a special education exchange visitor program.

The requirements for issuance of an H-3 Special Education Exchange Visitor Program visa are that the petitioner has a “professionally trained staff” and a “structured program for providing education to children with motor disabilities”. In addition, the beneficiary must be “nearing completion” or have a “bachelor’s degree” or “extensive training and experience”. 8 CFR § 214 (H)(7)(iv)(B). The regulation reads as follows:

Part B: /Evidence. An H-3 petition for a participant in a special education exchange visitor program shall be accompanied by:

- (1) *A description of the training program and the facility’s professional staff and details of the alien’s participation in the training program (any custodial care of children must be incidental to the training),*

- (2) *Evidence that the alien participant is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental or emotional disabilities.*

8 CFR § 214 (H)(7)(iv)(B).

The Petitioner must show with documentation and other evidence that they meet these requirements. The Petitioner should have some structured program, staff and facilities. It is a good idea to provide evidence that describes in detail the organization purpose and structured program that provides education to children with motor disabilities.

The petitioning agency must apply for the H3 visa and obtain approval before the H3 visa applicant can work for the petitioner. The H3 visa holder can stay for up to 24 months, although we generally recommend a shorter period such as 18 months to allow the visa holder to switch status to an H1 visa or some other visa without returning to their home country.

There is no requirement that the employer pay prevailing wage, as with the H1b visa. However, we do have to identify the salary and if it is far below market, the government may raise some questions about this.

The person obtains a work permit, social security card and drivers license. They can work legally here for your entity. They can also travel back and forth to their home country without problem. These are the advantages of the H3 over the use of the B1 visa.

NOTE: The requirements are not the same as an ordinary H-3 Training visa. The regulations at 8 CFR § 214 (H)(7)(iv)(A)(3) state: “The requirements in this section for alien trainees [i.e. the normal H-3 trainee/alien trainee] shall not apply to petitions for participants in a special education exchange visitor program. We have also attached the H-3 Nonimmigrant Trainee description from the USCIS website [Exhibit B] that details the difference between the two types of H-3 classification and confirms that: “...special education H-3 classification has slightly different eligibility requirements.”

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last six years by San Francisco Magazine “Super Lawyers” edition (2006-2011). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had his own law office in downtown San Francisco for 20 years.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060 (Santa Rosa).