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U.S. Department of Justice

Immigration and Naturalization Service

*Identified as non-eligible
and clearly unworkable
in light of personal*

OFFICE OF ADMINISTRATIVE APPEALS
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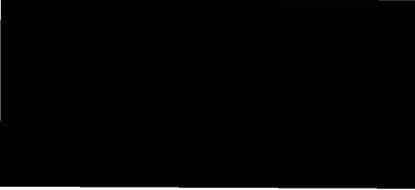
File: WAC-01-153-51276 Office: California Service Center

Date: 02 JUL 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(Q) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(Q)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant. The beneficiary is a chef. The petitioner seeks Q-1 classification of the beneficiary as a cultural exchange visitor pursuant to section 101(a)(15)(Q) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1101(a)(15)(Q). The petitioner seeks to employ the beneficiary temporarily in the United States as a sous chef for a period of fifteen months at a salary of \$500 per week.

The director denied the petition on the grounds that the beneficiary would be not be employed in a qualifying cultural exchange program as defined for this type of visa classification.

On appeal, counsel for the petitioner submitted a brief arguing that they believe the petitioner has satisfied the requirements of the controlling regulations.

Section 101(a)(15)(Q) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(Q), defines a nonimmigrant in this classification as:

an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.

Service regulations at 8 C.F.R. 214.2(q)(1)(iii) pertaining to cultural exchange visitors define, in pertinent part:

International cultural exchange visitor means an alien who has a residence in a foreign country which he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

Qualified employer means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the

Attorney General in accordance with the provisions of § 101(a)(15)(Q) of the Act.

8 C.F.R. 214.2(q)(2) further provides:

Admission of international cultural visitor--(i) General. A nonimmigrant alien may be authorized to enter the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality. The period of admission is the duration of the approved international cultural exchange program or fifteen (15) months, whichever is shorter. A nonimmigrant alien admitted under this provision is classifiable as a cultural visitor in Q-1 status.

8 C.F.R. 214.2(q)(3) further provides:

International cultural exchange program--(i) General. A United States employer shall petition the Attorney General on Form I-129, Petition for a Nonimmigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified nonimmigrant aliens to be admitted in Q status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The cultural visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

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(iii) *Requirements for program approval.* An international cultural exchange program must meet all of the following requirements:

(A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an

isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the cultural visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the cultural visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component.* The cultural visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the cultural visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

At issue in this matter is whether the petitioner is operating an international cultural exchange program that is eligible for designation by this Service under section 101(a)(15)(Q) of the Act and whether the beneficiary may be classified as an international cultural exchange visitor.

Section 101(a)(15)(Q) of the Act provides for classification of aliens coming to the United States for the primary and specific purpose of international cultural exchange. In order to be eligible for designation by the Attorney General as an international cultural exchange program, the petitioner must satisfy the requirements of 8 C.F.R. 214.2(q)(3)(iii). Those requirements specify, in pertinent part, that the petitioner operates a "structured program" of cultural exchange, the program must have a "cultural component" that is an "essential and integral part" of the alien's employment, and the work to be performed must not be independent of the cultural component of the exchange program.

In this case, the petitioner is an Italian restaurant operating in a resort hotel, the [REDACTED]. As noted by the director, any restaurant featuring the cuisine of a specific country has a modest degree of cultural exchange in the decor and cuisine offered. However, the petitioner does not operate a structured program of cultural exchange and does not operate a program that has an essential cultural component. The restaurant

is not accessible to the American public solely for the purpose of cultural exchange. Nor has it been established that the sous chef's work is dependent on the cultural component of a cultural exchange program. The petitioner is primarily in the business of food service. Any exchange of the cuisine, history, and art of Italy with the restaurant's patrons is peripheral to that primary purpose. A chef, host/hostess, or wine steward in a restaurant is ineligible for Q-1 classification unless the restaurant is specifically structured and operated as a cultural exchange program.

The denial of this petition is without prejudice to the petitioner filing a new petition under alternate provisions of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.