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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 13 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

*Mari Johnson*

& 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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner in this matter is a private liberal arts college. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of four months as a part-time lecturer at its Kodály Center for Music Education. The petitioner seeks classification of the beneficiary as an international cultural exchange visitor pursuant to the provisions of section 101(a)(15)(Q)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(Q)(i).

The director denied the petition, finding that the petitioner's program was not a qualifying international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3) whose participants would be eligible for Q nonimmigrant visa classification. The director found that the alien would not be engaging in employment of which the essential element is the sharing of the culture of the alien's country of nationality. The director further found that the petitioner failed to designate a qualified employee or representative responsible for administration of its international cultural exchange program.

On appeal, the petitioner submitted a statement in support of its appeal.

Section 101(a)(15)(Q)(i) of the Immigration and Nationality Act 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.

Citizenship and Immigration Services (CIS) regulations pertaining to international cultural exchange programs set forth in detail the requirements for program designation and are listed, in pertinent part, for the convenience of the petitioner.

The regulation at 8 C.F.R. § 214.2(q)(3) 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-1 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 international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

\* \* \*

(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 international cultural exchange 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 international cultural exchange 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 international cultural exchange 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 international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

The first issue to be addressed in this proceeding is whether the petitioner established that its proposed program is eligible for designation by CIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program.

In a request for additional evidence (RFE), the director specifically requested that the petitioner provide evidence showing that its international cultural exchange program (program) has a cultural component that is an essential and integral part of the cultural visitor's employment and that its program has a work component, which meets the regulatory requirements.

In response to the RFE, the petitioner wrote: "[r]egarding evidence of the cultural component of her intended employment, [the beneficiary] will be teaching four graduate level classes . . . based on the Hungarian system of music education that has developed there since the 1930's." The petitioner further wrote that the beneficiary "will exhibit her process of teaching [the Kodály] philosophy in the classroom" and that her students would ultimately "implement the Kodály approach in music classrooms around the country."

The petitioner stated that [REDACTED] the Hungarian composer, inspired the Kodály philosophy and system of teaching music; and that the Kodály "system has been developed and shaped by generations of musicians and teachers in Hungary over the last 75 years."

After careful review of the record, it must be concluded that the petitioner failed to establish that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3).

First, the program does not have an essential and integral cultural component. The primary purpose of the petitioner's program is to educate music students and future music teachers, rather than provide a cultural exchange program open to the public. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the international cultural exchange visitor's country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B).

Second, the petitioner did not establish that the beneficiary would be transmitting cultural values from the country of her nationality, Romania. According to the evidence on the record, although the Kodály philosophy of music education was inspired by a Hungarian composer and educator, it incorporates ideas from many different cultures.<sup>1</sup>

On appeal, the petitioner submits the following:

- Kodály Summer Institute brochures, which are sent to a mailing list of 10,000
- Announcements of our annual Kodály summer lecture and concert series, which is free to the public and attracts many people in the Bay area
- Announcements and programs of the annual [petitioner's] Children's Choral Festivals
- A newsletter published annually, sent to friends and alumni of the Kodály Program
- Flyers for workshops sponsored by the Northern California Association of Kodály Educators, a local organization that invites visiting [Holy Names University] Hungarian instructors to provide instruction on special topics of Hungarian music education.
- A postcard advertising the new website developed by the Holy Names University's Kodály faculty
- A brochure published by the Organization of American Kodály Educators that describes this philosophy of music education

The announcements and programs indicate that the genre of music presented to the public is not limited to Romanian composers. The petitioner offers a program of study titled *Advanced Musicianship through the Study of Bach*. The concern programs indicate that the petitioner sponsored the chamber music of Mendelssohn, Bartok, Mozart, Hadyn and Kodály, among others.

The statute and the regulations require that the alien be coming to the United States to engage in employment of which the *essential element* is the showing of the alien's country of nationality. The beneficiary is a native and citizen of Romania. The petitioner proposes to employ the beneficiary as a music instructor. In such a position, the beneficiary would not be engaging in employment of which the essential element is showing the alien's country of nationality, i.e., Romania. The petitioner did not demonstrate that the work performed by the beneficiary would serve as the vehicle to achieve the objective of cultural exchange.

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<sup>1</sup> See Kodály Program flyer in the record of proceedings.

The second issue to be addressed in this proceeding is whether the petitioner fulfilled the regulatory requirement of designating a representative responsible for administering the international cultural exchange program. See 8 C.F.R. § 214.2(q)(4)(i)(B). The petitioner failed to submit such evidence with the initial filing and its response to the director's request for additional evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The petitioner failed to satisfy this requirement.

On appeal, the petitioner asserts that CIS approved other petitions that had been previously filed on behalf of visiting Hungarians. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same evidence, the approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary or petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Section 101(a)(15)(Q)(i) of the Act provides for classification of aliens coming to the United States for the primary and specific purpose of international cultural exchange. In determining whether a sponsor's program is eligible for designation under this provision, the public accessibility and the cultural exchange value of the program are the controlling considerations. An employee of a national exhibit at an international cultural forum qualifies for such classification, even though the associated employment may be in a relatively minor retail function such as food service or the vending of souvenirs. An employee of a major multinational corporation involved in an international intra-company exchange program would not qualify where the primary purpose of the program is the internal business interests of that corporation, rather than a more general sharing of the history, culture, and traditions of the country of the alien's nationality. Accordingly, it must be concluded that the petitioner has failed to establish that it operates an international cultural exchange program eligible for designation under section 101(a)(15)(Q)(i) 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.