



U.S. Citizenship  
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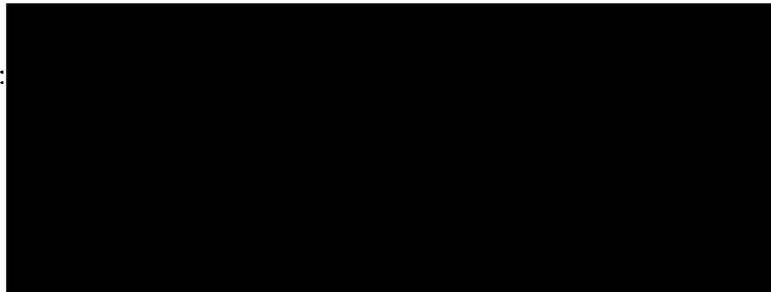
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**D10**



FILE: SRC 05 800 29121 Office: TEXAS SERVICE CENTER Date: JUN 08 2006

IN RE: Petitioner:  
Beneficiaries:



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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Acting Director (Director), Texas 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 hospitality services company. The petitioner seeks to employ the beneficiaries temporarily in the United States for a period of approximately 15 months. The petitioner seeks designation of its program as an international cultural exchange program and classification of the beneficiaries as international cultural exchange visitors 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).

Finding the evidence insufficient to establish eligibility, on June 21, 2005, the director requested the petitioner to submit additional evidence. The petitioner responded to the request.

The director denied the petition, finding the petitioner's program does not qualify as a cultural exchange program as defined by the Act and regulations.

On appeal, the petitioner submits a brief and additional documentation. Although most of the petitioner's appellate submission consists of evidence already contained in the record, the petitioner did submit some new material on appeal. Regarding the newly submitted material, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this instance, the director gave the petitioner the opportunity to submit this evidence prior to her decision. We emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. The submission of the requested evidence on appeal does not overcome the petitioner's failure to submit the evidence when first requested to do so and the AAO will not consider such evidence on appeal.<sup>1</sup>

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.

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

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<sup>1</sup> *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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 director determined, in part, that the petitioner failed to establish that its international cultural exchange program has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment or training, as required by 8 C.F.R. § 214.2(q)(3)(iii)(B). Therefore, the director found the petitioner's proposed program ineligible for designation by Citizenship and Immigration Services (CIS), under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program.

As it relates to eligibility, the petitioner submitted the following documentation:

- Unpublished decisions of the AAO.
- Copies of approval notices for Forms I-129.
- A letter from the president of the petitioning organization describing its program.
- GHE's [petitioner's] Structural Training Plan (GSTP).
- A cultural exchange itinerary.

- Evidence of events hosted by the petitioning organization and other organizations including affiliates and photographs of participants at such events, many of which are uncaptioned, undated and blurred and too dark to distinguish.
- Copy of e-mails regarding the petitioner's cultural exchange webinar.<sup>2</sup>
- Letters from affiliates of the petitioning organization.
- Letters and statements from program participants regarding their activities in the United States.
- Miscellaneous forms (performance review, interview, participant agreement).
- The beneficiaries' resumes and background histories.
- Copies of letters mailed to local ethnic groups.
- Samples of recipes handed out by program participants. Copies of letters mailed to local ethnic groups.
- A sample of a power point presentation.

According to the petitioner's plan, it "presents foreign cultures to the American public during the course of a normal business day" by encouraging the beneficiaries to wear "culturally proud nametags," and native dress on national holidays, to display maps and souvenirs of their home country and to plan and stage celebrations of their own culture. The petitioner states that by displaying symbols of their cultural heritage, the beneficiaries evoke questions from the hotel guests, thereby providing an opportunity for cultural exchange.

The petitioner submitted an itinerary, indicating that the beneficiaries would spend 31 days at its headquarters and the balance of their 12-month stay at three different hotels.

The petitioner submitted flyers announcing several events. Some of these events were co-sponsored by the petitioner and other entities. For example, the petitioner and the African Lady Shop sponsored two events, a fashion show and an African Cultural Heritage festival. Another event was jointly sponsored by the petitioner and the International Student Association at Furman University. Program participants made power point presentations on their countries of origin. These evening events typically were held for approximately three hours, from 6 p.m. to 9 p.m., sometimes less.

Some of the flyers advertised events held at the petitioner's affiliates' place of business. For instance, the record contains a flyer for an "International Christmas Celebration" at the [REDACTED] [REDACTED], South Carolina in December 2004, a flyer titled "Brazilian Night" advertising an event at the [REDACTED] in Marietta, Georgia in February 2005; and a flyer titled "Unity in Diversity" advertising an event that was held at the [REDACTED], South Carolina in June 2005.

The petitioner submitted photographs, most of which were blurry, uncaptioned and undated.

In review, the evidence indicates that the great majority of cultural exchange activity took place outside of work hours and that the total time allocated to such activity was insignificant in relation to the total amount of time participants spent at their work sites.

The petitioner submitted evidence of a webinar it developed for the participation of program participants. The evidence indicates that the petitioner created the webinar as a chat room for program participants. There is no evidence that the program participants would share their cultural with the American public using this chat room.

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<sup>2</sup> The term webinar is used for chat room.

Even if the chat room were accessible to the American public, the potential for cultural exchange is negligible, nor would it be necessary to bring individual aliens to perform this type of exchange.

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) because the petitioner failed to establish that the beneficiaries would be engaged 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 amount of culture sharing among the participants and the public would be tangential and negligible. Accordingly, the petition may not be approved.

The petitioner noted that CIS approved other petitions that the petitioner had previously filed on behalf of other employees. The director's decision in the instant case does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. This fact is significant because each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proposed position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based upon the same unsupported assertions that are contained in the record here, the approval of the prior petition would have been erroneous. The AAO is not required to approve 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). Neither CIS nor any other 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). The AAO is never bound by a decision of a service center or district director. *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).

The petitioner also refers to two unpublished decisions of the AAO regarding classification of a beneficiary as a Q-1 nonimmigrant. The petitioner has offered no argument or furnished any evidence to establish that the facts of the instant petition are analogous to those of the unpublished decisions which involve a petitioning bakery and restaurant seeking to employ the beneficiary as a pastry chef and a sous chef, respectively. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In review, the evidence indicates that the great majority of cultural exchange activity took place outside of work hours and that the total time allocated to such activity was insignificant in relation to the total amount of time participants spent at their work sites.

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) because the petitioner failed to establish that the beneficiaries would be engaged 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 amount of culture sharing

among the participants and the public would be tangential and negligible. Accordingly, the petition may not be approved.

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.