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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

PUBLIC COPY



File: LIN-00-145-52463 Office: Nebraska Service Center

Date: 07 NOV 2001

IN RE: Petitioner:
Beneficiary:



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



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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner in this matter is a United States branch of a multinational manufacturing corporation headquartered in the Netherlands. The beneficiary is a college intern and an employee of a foreign branch of the corporation. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of approximately three months as a summer intern. The petitioner seeks designation of its internship exchange program as an international cultural exchange program and classification of the beneficiary as an international cultural exchange visitor pursuant to the provisions of section 101(a)(15)(Q) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1101(a)(15)(Q).

The director denied the petition determining that the petitioner's internship exchange 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 beneficiary would be employed primarily as a business intern and that any cultural exchange would be incidental to the primary internal business purposes of the exchange program.

On appeal, counsel for the petitioner submitted a brief arguing that the petitioner's internship program meets the criteria of the pertinent regulations.

Section 101(a)(15)(Q) 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.

Service regulations pertaining to international cultural exchange programs set forth in detail the requirements for designation and are listed, in pertinent part, for the convenience of the petitioner.

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.

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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 is whether the program proposed by the petitioner is eligible for designation by this Service, on behalf of the Attorney General, under section 101(a)(15)(Q) of the Act, as an international cultural exchange program.

The petitioner is a multinational corporation with operations in more than 60 countries that operates approximately 150 facilities in the United States. It operates a program of summer college internships where up to thirty college interns employed at its European facilities are placed in its United States facilities and United States interns are placed in its European facilities. The instant petition was filed as one of twelve alien interns for whom it sought Q classification during the relevant calendar year. It appears that the petitioner filed separate I-129 petitions for each of the twelve interns rather than listing them all on a single petition as allowed by 8 C.F.R. 214.2(q)(3)(i).

On appeal, counsel disputed the center director's adverse determination arguing, in pertinent part, that the regulations permit privately operated cultural exchanges and that the published preamble to the final rule stated that the provisions should not be unduly restrictive. Counsel stated that:

Akzo Nobel established its intern program to give foreign students - primarily Dutch and Swedish - the opportunity to demonstrate and exhibit their foreign business attitudes, philosophies and traditions to the American workers and segments of the American public during the course of their internship assignments....

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While there is not access to the entire American public at these Akzo Nobel locations, there is of course a finite limit to the number of Americans a foreigner can interact with over a three-month period in a practical training or employment setting. Additionally, the cultural exchange activities engaged in by the Akzo Nobel interns are culturally more meaningful to both the intern and the American public than, for example, encounters of only a few seconds by U.S. citizens purchasing a hot dog or a trinket from a foreigner at an amusement park.

After careful review of the record, it must be concluded that the petitioner failed to establish that its internship 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 petitioner's program is not adequately accessible to the American public. The purpose of the internship program is to provide the petitioner's U.S. employees with exposure to its foreign business practices and personnel, rather than to provide an opportunity for the American public to learn about foreign cultures. While the U.S. employees of the petitioner are arguably a segment of the American public, such a narrow segment of the American public is considered to be more narrow than that contemplated by the statute. As stated at 8 C.F.R. 214.2(q)(3)(iii)(A), a business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access does not qualify. The internship program is not accessible to the American public at large and the U.S. employees of the petitioner, as a segment of the American public, share a common business interest, rather than a common cultural interest.

Second, the exchange program does not have an essential and integral cultural component. The exchange component of the petitioner's internship program is more narrowly focused on the exchange of business practices and attitudes, rather than focused on an exchange of the broader cultural attitudes, customs, history, heritage, philosophy, or traditions of the cultural visitor's country of nationality as set forth at 8 C.F.R. 214.2(q)(3)(iii)(B). As noted by the director, any international business travel involves a degree of cultural exchange when individuals from different nations have the opportunity to work together. Such incidental levels of cultural exchange do not rise to the level contemplated in the Act. The primary purpose of the petitioner's international internship program is for an exchange of intra-company business practices, rather than a nation-to-nation cultural exchange program open to the public.

Third, the petitioner did not establish that the work component of its internship program was not independent of its cultural exchange component. The petitioner did not provide a description of the job duties of its interns. It was stated that they would train and work in a U.S. facility and make a report on their observations to a group of U.S. managers at the conclusion of their internship. The petitioner did not demonstrate that the work performed by its interns would serve as the vehicle to achieve the objective of cultural exchange. It must be concluded that the mere fact that employees of different nationalities would work together in the on-going business activities of a corporation does not satisfy the intent of this provision.

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 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 and any employment issues are incidental to those considerations. An employee of a national exhibit at some 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 does not similarly 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) of the Act.

Administrative notice is made that this decision does not bring into question the business value of the petitioner's internship program or the qualifications of the beneficiaries selected to participate in the program. The denial of this petition is without prejudice to the petitioner pursuing its summer internship program under alternate visa provisions.

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.