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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 03 207 51093 Office: TEXAS SERVICE CENTER Date: APR 12 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a 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:

[redacted]

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.

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the 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 Japanese restaurant. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of fifteen months as a Japanese specialty chef and instructor. 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)(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 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 petitioner failed to designate a qualified employee or representative responsible for administration of its international cultural exchange program. The director further 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.

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.
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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 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.

The petitioner is a Japanese restaurant that proposes to employ the beneficiary as a Japanese specialty chef and instructor.

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 exchange program does not have an essential and integral cultural component. The beneficiary would prepare Japanese specialty cuisine for the petitioner's patrons. International cuisine involves a degree of cultural exchange, but such cultural exchange is incidental. The primary purpose of the petitioner's proposed international exchange program is to sell restaurant food, 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 his nationality, South Korea. The beneficiary would be working as a Japanese specialty chef and instructor.

On appeal, the petitioner explains that the beneficiary will share the culture of his country of nationality, South Korea, while working as a Japanese specialty cook because there has been some fusion of the cultures of Korea and Japan. The petitioner assets that because Korea became a protectorate of Japan in 1895 and was annexed by Japan in 1910, the Korean and Japanese cultures have blended. The evidence is insufficient to establish that the Korean and Japanese cultures have melded to the extent that Japanese cuisine may be considered a cultural product of South Korea.

The petitioner further asserts that Korean people own most Japanese restaurants.

The petitioner's argument is not persuasive. 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 South Korea. The petitioner proposed to simply employ the beneficiary as a Japanese specialty chef and 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., South Korea.

The petitioner did not demonstrate that the work performed by the beneficiary would serve as the vehicle to achieve the objective of cultural exchange.

It is noted that the petitioner sought to designate the beneficiary as a representative who would be responsible for administering the international cultural exchange program. In order to qualify as a international cultural exchange program, the petitioner must have designated a representative as of the date of filing, not at some future date. According to regulation, a petition shall be denied where evidence submitted does not establish filing eligibility at the time the petition was filed. 8 C.F.R. § 103.2(b)(12).

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 might qualify 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.