U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

D-10

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 04 074 50287 Office: TEXAS SERVICE CENTER Date: JUL 14 2004

IN RE: Petitioner: [redacted]
Beneficiari

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on certification. The certified denial will be affirmed and the petition will be denied.

The petitioner is a business seeking to bring in foreign hospitality workers for placement at various hotels (partner sites) throughout the United States. The petitioner seeks to employ the beneficiaries temporarily in the United States for a period of fifteen months as "cultural program coordinators." The petitioner seeks designation of its internship exchange 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).

The director denied the petition, finding that the petitioner failed to establish that it has a structured program and that the cultural aspect of the program is an essential and integral part of the employment or training; hence, its exchange program is not a qualifying international cultural exchange program. The director found that the petitioner is not actually the employer. The director further found that the petitioner failed to file an itinerary.

The petitioner submitted a brief in response to the notice of certification.

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 . . . 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 petitioner asserted that it was filing a Form I-129 petition and supplement in order to "repeat" a previously approved cultural exchange program. According to the evidence on the record, the petitioner has previously filed and received approval of Form I-129 petitions for its cultural exchange program.[1]

The director denied the petition, in part, because the petitioner failed to submit an itinerary. The regulation at 8 C.F.R. § 214.3(q)(5)(iii) requires an itinerary where services will be performed in more than one location. The record reflects that the beneficiaries of the petition will be working at more than one location. In response to the notice of certification, counsel for the petitioner states it would have supplied Citizenship and Immigration Services (CIS) with an itinerary had it been asked to do so. The petitioner failed to submit an itinerary in response to the notice of certification although it submitted other supporting documentation with its brief. The petitioner failed to overcome this concern of the director.

The next 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 director determined that the petitioner failed to establish that it has a structured program and that the cultural aspect of the program is an essential and integral part of the employment or training.

In a letter addressed to CIS, the petitioner stated, "the exchange visitors plan and implement a variety of activities, displays, exhibits, hotel decorations, artifacts, and events to present to our over-night or weekly patrons."

The director noted that the petitioner's exchange program is not structured. The director determined that:

> It appears that the cultural activities within the actual work place, the hotels themselves, are haphazard and left to the discretion of each hotel owner [Page 2 – GHE[2] Official

[1] The petitioner submitted copies of approval notices on Q-1 cultural exchange visitors.

> Partnership/Affiliation Agreement]. In the contract between GHE and the partner site the partner agrees "to allow Participant to expose, exhibit, explain, and/or present his or her foreign culture (and its customs, history, philosophy and traditions) to the American public as a result of, through, and in the course of the Participant's employment and/or training with GHE through such structured activities, such as seminars, lectures, exhibits, classes, festivities, etc."

The AAO concurs that the petitioner's cultural exchange program is not structured, but the issue is not whether the program is structured, per se, but whether the program meets the requirements set forth at the regulation at 8 C.F.R. § 214.2(q)(3)(iii).

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). The regulation requires that the international cultural exchange program have a cultural component that is an essential and integral part of the international cultural exchange visitor's employment or training. In the instant case, the petitioner acts as an intermediary between prospective cultural exchange visitors/employees and hotel employers. The petitioner contracts with hotels to place cultural exchange visitors at different "host sites." The host sites/hotels agree to allow the cultural exchange visitors to expose, exhibit, explain and/or present his or her foreign culture to the American public. The petitioner's exchange program does not have an essential and integral cultural component. The beneficiaries in this case would work in the hospitality industry as desk clerks and could "expose, present, exhibit" their respective foreign culture however they saw fit. Because the petitioner failed to submit an itinerary, it is impossible to determine how the various hotel sites plan to utilize its desk clerks to exhibit the beneficiaries' native culture.

Further, the work component may not be independent of the cultural component, but must serve as the vehicle to achieve the cultural component, as indicated in the above-cited regulation. The petitioner indicates that the beneficiaries dress in his or her native costume is designed to stimulate dialogue with the guests about the native country. Any cultural exchange that occurs through the beneficiaries wearing his or her native dress is incidental and not integral to the employment. Similarly, the petitioner states that the beneficiaries assemble model villages reflecting their particular country next to the concierge desk. The cultural component of the program 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). The cultural components described by the petitioner are not an integral part of the work to be performed by the beneficiaries.

Finally, the petitioner did not establish that it would be the beneficiaries' employer. In response to a request for additional documentation, including a specific request for all W-2s of all Q-1 visitors currently in the United States under the auspices of the petitioner's cultural exchange program, the petitioner responded:

> GHE [the petitioner] is [sic] actual employer of all of our participants. We pay them directly from our GHE payroll account. Enclosed are copies of recent checks that GHE paid to its previously approved Q-1 participants.
>
> GHE has two kinds of cultural exchange programs in place [sic] Global Exchange Entry Level Positions (GEELP) and Global Exchange Management Training Positions (GEMTP). As part of GEELP's program, exchange participants receive a $600 monthly stipend, fully furnished housing, transportation, and cultural activities such as seminars and shows. Please

---

[2] GHE stands for Global Hospitality Exchange, the petitioner.

> see attached copies of stipend checks issued by GHE to the cultural exchange participants. As part of GEMPT's program partisans receive a salary ranging from $15,000 - $35,000 per year paid by GHE [the petitioner] in addition to housing and transportation. Enclosed are copies of salary checks issued by GHE to our GEMPT Exchange participants. . . . Since GHE [the petitioner] is paying the participants, we are not submitting the W-2's of all Q-1 visitors.

In response to the request for additional evidence, the petitioner submitted the following:

- An Employer's Quarterly Tax and Wage Report for the first quarter of 2004 listing six employees.
- W-2's issued to three employees who are approved beneficiaries.
- Copies of checks issued to twelve individuals, four of whom are named beneficiaries.

The petitioner initially submitted evidence that it had successfully petitioned on behalf of 23 beneficiaries. The petitioner failed to account for the wages paid to all 23 beneficiaries. The petitioner initially failed to explain why it could not provide copies of W-2's for all its cultural exchange program participants/employees. In response to the notice of certification, counsel for the petitioner states that the director merely requested copies of W-2's if the petitioner had not paid the employees. In the Notice of Intent to Deny, the director stated that if the exchange visitors "are not paid by GHE, submit copies of the W-2's of all Q-1 visitors currently in the U.S. under the GHE program." The director also requested that the petitioner "[p]lease send a copy of all W-2s issued by GHE in 2003. Send a copy of the last Georgia Employer's Quarterly Wage and Tax Report for GHE." The petitioner has failed to submit all documentation requested and failed to establish that it is the employer of its program participants.

Section 101(a)(15)(Q)(i) of the Act provides for the 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 director's decision denying the petition is withdrawn in part and affirmed in part.