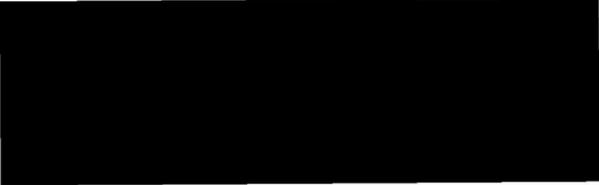




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APR 28 2009

FILE: EAC 09 062 51158 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiaries:



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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the nonimmigrant petition and certified his decision to the Administrative Appeals Office (AAO) pursuant to the regulation at 8 C.F.R. § 103.4(a). The AAO will affirm the director's decision to deny the petition.

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). The petitioner operates an amusement and theme park located in Arlington, Texas. It seeks to employ the 30 beneficiaries temporarily in the United States as amusement part workers for a period of approximately 8 months.

The director denied the petition on February 5, 2009 and certified his decision to the AAO. The director determined that the petitioner's program is ineligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act. Specifically, the director determined that the petitioner failed to establish that its cultural exchange program has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment, as required by the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B); or (2) that the international exchange visitors' employment in the United States will serve as a vehicle to achieve the objectives of the cultural component, as required by 8 C.F.R. § 214.2(q)(3)(iii)(C).

The regulation at 8 C.F.R. § 103.4(a)(2) allows an affected party 33 days from the date of the service center director's decision to submit a brief in the certification proceeding. Counsel for the petitioner has informed the AAO that he does not intend to submit a brief and has waived the right to do so. Therefore, the record of proceeding is complete.

Section 101(a)(15)(Q)(i) of the 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 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 issue to be addressed in this proceeding is whether the petitioner established that its proposed program is eligible for designation by USCIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. Specifically, the director determined that the petitioner's program does not satisfy the regulatory requirements pertaining to the cultural and work components. The director concluded that the cultural component of the program would be merely incidental to the beneficiaries' employment as amusement park workers, and that the beneficiaries' work will not serve as a vehicle to achieve the objectives of the cultural component.

Upon review, and for the reasons discussed herein, the AAO concurs with the director's decision to deny the petition.

The petitioner filed the nonimmigrant petition on December 22, 2008 on behalf of 30 beneficiaries, all citizens of South Africa. The petitioner stated on Form I-129 that the beneficiaries will all serve as amusement park workers, with responsibility for operating and maintaining amusement park rides.

In a letter dated December 8, 2008, the petitioner provided the following introduction to its cultural exchange program:

[The petitioner's] Q-1 program is designed to continue and further promote the existing Six Flags theme parks' cultural exchange program and incorporate into the program the company-wide "*Faces of Our World*" theme. The *Faces of Our World* is an amalgamation of the successful programs of the last several years at the Chicago, New Jersey, New England and Maryland parks and includes new special events, presentations, informal talks/lectures, dance/musical performances and other types of cross-culture-based programs, as well as on-going interactions and conversations with guests/visitors.

The petitioner further elaborated regarding the cultural component of its program, noting that it closely follows the *Faces of Our World* program implemented at several sister parks throughout the United States. The petitioner described the program as follows:

[U]pon arrival at [the petitioner's park], the Q-1 participants will receive specific Faces of the World program training designed to familiarize them with the entire Q-1 program and prepare them to participate in the established stage events and cultural presentations/displays. The actual cultural exchange duties at the job station specific to each participant will begin after the usual training and orientation provided to all [the petitioner's] employees and will include detailed instructions and training on the ongoing cross-cultural interactions that make the program so successful. . . .

A major element of [the petitioner's] Q-1 entertainment package includes celebrating entertainers from all over the world through a traditional Q-1 visa program. [The petitioner] will offer live, on-stage performances by the South African musicians, dancers, singers and speakers. . . . Flyers, posters and other forms of public notice will be distributed to announce the major performances.

Some of the participants will serve as guides dressed in traditional costumes of their home countries that wear name badges that read, e.g., "Hello, I am the face of South Africa, ask me questions!" and provide handouts with interesting facts/articles about the culture, customs, history, ecology, famous people and sports of South Africa. Others will entice guests to try authentic South African food and beverages. . . . In addition [the petitioner] exhibits and sells merchandise and souvenirs imported from the various countries of the themed areas. . . . The Q-1 participants will also entertain and educate guests through live special events such as soccer contests, beach volleyball, special dance presentations, lectures and cultural videos.

The cultural requirements of the prospective Q-1 program participants were further detailed in a document titled "Q-1 Cultural Exchange Visa Program Description and Agreement." The requirements listed therein provide that each participant would: wear a name tag indicating their city and country of origin; wear South African national colored shirts or other indigenous attire at times; actively engage park visitors in conversations referencing South Africa themes, facts, customs, heritage and languages; and have one or more skills/talents such as rugby, soccer or cricket playing/coaching, South African cooking/dancing/singing, South African beading or arts and crafts; storytelling; swimming/lifeguarding; tour guide experience; farming or general teaching experience. Finally, the program requirements indicate that participants "will generally engage and educate park visitors about their specific South African regions or city."

The formal program description indicated that specific cultural events scheduled for 2009 include: daily South African themed parades and dance performances; Carnival Days; South African food preparation and recipe demonstrations; Zulu dance lessons; a South African Independence Day Celebration; Farming/Safari days; a South Africa Information PowerPoint educational presentation to be displayed in a pavilion during special events; South African local music/instrumental recitals at least three times per week; rugby and soccer demonstrations daily; rugby and soccer lessons for kids twice per week; story telling; South African flags displayed around the park; printed materials on South Africa to hand out during events; and on official park tour guide for South African events.

With respect to the work component of its program, the petitioner stated the following:

The participants' work activities are entirely dependent on the cultural components of the program as all job station activities are directly related to the means by which cross-cultural communication, education and interaction is achieved. When the cultural exchange participants are not performing in the itinerary of special cultural exchange events, lectures and performances, they will be performing the culturally-specific duties of their job stations, all of which are directly aimed at fostering the cultural exchange between the participants and [the petitioner's] guests.

The petitioner stated that the program participants will wear native garments and nametags that identify them as South Africans, take part in "song and dance performances" on an hourly basis during all work duty shifts, and continuously engage park visitors in conversation about South African subjects "while they wait their turns at the themed sites, games, booths and rides." The petitioner emphasized that the beneficiaries would "in effect be performers and cultural educators for the entirety of their duty shifts."

The above-referenced "Q-1 Cultural Exchange Visa Program Description and Agreement" indicated that the beneficiaries will hold the position of "Amusement and Recreation Attendant," and notes that participants "may be assigned various described duties for specific stations, rides, ride areas or concessions, or for the entire park." The duties described therein included: providing park visitors with general information about the park; announcing or describing amusement park attractions to guests; recording details of attendance, sales, receipts, reservations or repair activities; monitoring activities to assure adherence to rules and safety procedures; selling tickets and collecting fees from visitors; cleaning park equipment, vehicles, rides, booths facilities or grounds; fastening safety devices for visitors; and inspecting and maintaining equipment. The

agreement indicates that the beneficiaries may be assigned to the water ride area, dry ride area, concession/food service area or park services area, noting that no particular station or position could be guaranteed. The job description notes that "an important part of your duties will be to integrate the cultural exchange elements of [the petitioner's] Q-1 Cultural Exchange Visa Program into the tasks and activities you are assigned."

Finally, the petitioner attached a separate job description for a "Cultural Theme Park Worker," which appears to have been prepared by the petitioner's national office, rather than being specific to the petitioner's specific Q-1 program. This description is similar to that described above, and also indicates that participants in the program will be assigned to guest services, ride operations, games and attractions, merchandise, park services and lifeguard job stations. The description indicates that "cultural activities will take place during each participant's duty shift in combination with many of the regular job duties of the position." The description indicates that participants must be able to speak English, have multiple cultural skills/talents, be able to read operating manuals and handbooks, have the ability to clean counters, sinks and toilets and continuously mop and sweep, wear protective equipment, operate machinery, swim and pass a lifeguard course, count money and make change.

The petitioner's initial submission also included a sample "Cultural Calendar of Events" for June 2009. The calendar indicates that there will be a daily opening ceremony, a daily dance demonstration, twice daily cultural demonstrations held at the park's "Silver Star Carousel Stage," cooking classes on Tuesdays, and soccer matches every other Saturday.

The director issued a request for additional evidence (RFE) on January 5, 2009. The director noted that the petitioner indicated that the beneficiaries may work in any of six different positions and requested detailed job descriptions for each of the positions identified. The director further requested how the cultural component is accomplished for each position. The director instructed the petitioner to: (1) submit persuasive documentation establishing the beneficiaries' integral role and participation in the administration of the intended cultural exchange program; (2) identify the objective of each cultural component for all positions; (3) submit detailed, persuasive evidence establishing the amount of time the beneficiary will spend accomplishing the respective duties and responsibilities related to the cultural program, including the percentage of time the beneficiary will be involved in cultural activities while accomplishing the work component; (4) identify the amount of time the beneficiaries will be performing duties at the job stations and the time involved in cultural activities or events; and (5) submit a detailed itinerary or schedule of weekly/monthly/annual activities related to the cultural exchange program.

In a response letter dated January 19, 2009, the petitioner stated the following:

We note that after receipt of the RFE in this and other Six Flags Q-1 cases, and in part to assist in addressing the RFE issues, we have made additional changes to the *Faces of Our World* program which were planned but have now been rushed to completion for the 2009 season. Some of these changes involve the layout and superstructure at the parks and the specific cultural exchange venues, which are now entirely dedicated areas inside the park's "Global Village" where all the parks' cultural exchange activities take place.

The petitioner indicated that its initial submission "apparently caused some confusion as to the true nature" of its cultural exchange program. The petitioner indicated that enhancements have been made to its program including the designation of "a large area of the park" as a Global Village that will be exclusively staffed by program participants and where the cultural program will take place.

The petitioner explained its "Global Village" concept as follows:

The South African participants will be the center piece of the Global Village, directly sharing their cultural [sic] with the Global Village guests in various settings reflective of southern Africa. The shops, rides and restaurants will all be hosted by South Africans who will engage in the continuous interactions with park guest in their Global Village positions. They will tell stories, describe native language expressions and terms and participate in varied demonstrations that exhibit or explain the attitude, customs, history, heritage or philosophy of South Africa. The Global Village also hosts special, live, on-stage performances by South African musicians, dancers, singers and speakers at the Global Village event stage.

The petitioner indicated that the beneficiaries would be scheduled to perform in group presentations, provide handouts with interesting facts about South Africa, invite guests to sample ethnic food, and assist in the exhibition and sale of Africa-related merchandise and souvenirs.

The petitioner indicated that it has "entirely reformulated the job descriptions and positions of the Q-1 beneficiaries." The petitioner noted that the beneficiaries would be filling the positions of "Rides" and "Concessions." The petitioner indicated that the beneficiaries will ensure the safe and efficient operation of the Global Village and all its component rides, theme areas, concessions and facilities, and would perform their cultural responsibilities as follows:

While providing for the safety of guests and communicating procedures, the participants will engage guests about their culture, discussing the nature of amusement parks, fairs and rides in South Africa, etc. For example, the participants will inform rollercoaster riders to "Keep your hands inside the ride!" in Afrikaans or Zulu – with an English translation of course. In short, almost every interaction the Q-1 participants have with park guests will be part of the cultural immersion experience at [the petitioner's park.]

In response to the director's request for clarification as to how much time will be spent at job stations and how much time will be spent attending scheduled cultural events or activities, the petitioner stated the following:

[T]he beneficiaries will spend approximately 80-90% of their shift time in their respective job stations where the program's cultural exchange primarily takes place. Very little of that time is spent in job duties that do not involve face-to-face position-related cultural exchange interactions. For example, we calculated that 24% or less of the duties of the positions involve practical closing and opening procedures, but even those procedures involve preparation and securing of the cultural materials, props, sales items, etc. that will be used during normal park operations. . . . The remaining time spent by each beneficiary in the

various more performance-based and more widely public special events, parades and activities and performances, is about 10-20% of the total time.

The petitioner submitted a revised weekly calendar of events, which indicates the following daily events: an opening celebration at the park's Main Gate, the opening of the Faces of Our World Global Village at 11:30, a Cultural Demonstration at Silver Star Carousel Stage at 2:00, a Global Village costume parade at 8:00, and Global Village activities including face painting, beading demonstrations, drumming experience, sports demonstrations, and storytelling between the hours of 1:30 and 6:30.

In addition, the petitioner submitted a document titled "Faces of Our World Job Description & Standard Operating Procedure for Ride Greeter Position," and a similar document for the concessions position. The document indicates that the ride greeters will be trained to operate four different rides. The description indicates that the job holder will spend 12% of his or her time on pre-opening procedures, which involves maintenance verification procedures, equipment checks, testing the ride, sweeping, picking up trash, etc. An additional 12% of the time is devoted to closing procedures, which have no cultural-based activities.

The Ride Greeter spends 76% of the shift actually operating the ride, during which time he or she is "solely responsible for the safe operation of the ride and performing all duties and responsibilities." Ride Greeters are required to wear "cultural overdress" and greet guests in their native language. They are also encouraged to talk about the weather and the types of amusement parks they have in their home country, and to ensure that guests receive at least one "fun fact" about South Africa prior to departing the ride. The vast majority of the job description describes the safety, maintenance and operational procedures for the rides.

Finally, the Ride Greeter will devote "12% of shift for day scheduled" to "Cultural Demonstration Requirements." This component of the job includes attending a story telling event daily at 6:00 p.m., and cultural demonstrations held at 2:00 daily. It appears that not every beneficiary will be required to participate in all cultural demonstration activities daily.

The "Faces of Our World Job Description & Standard Operating Procedures for Concessions/Food Service Greeter Position" has a similar breakdown as those of the ride greeter, with a total of 24% of the time devoted to pre-opening and closing procedures. The remaining time is spent serving customers in the park's "South African Kitchen," while wearing "cultural overdress," greeting customers in a native language, and offering at least one "fun fact," such as informing the customers of the South African name for a chicken sandwich or the most popular condiments in their home country. Greeters are expected to engage guests in conversations about South Africa while they pick up their orders and sit down. Concessions Greeters have the same Cultural Demonstration Requirements listed above.

The director denied the petition on February 5, 2009 and certified his decision to the AAO. The director determined that the petitioner's proposed program does not qualify for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3). The director determined that the beneficiaries would not be engaging in employment of which the essential element is the sharing of the culture of their country of nationality. The director further determined that the work component of the program would be independent of the cultural component.

The director acknowledged that, while the beneficiaries would make contributions to the petitioner's Global Village program, it appears that their primary duties and responsibilities would be to operate rides and concessions. The director further noted that the petitioner made changes to their program subsequent to the issuance of the RFE, apparently excluding the positions of guest first services, games and attractions, park services and lifeguard positions, which were explicitly described as possible job assignments for the participants according to the initial evidence.

Nevertheless, the director noted that the beneficiaries' primary duties as described in response to the RFE response would involve standard duties associated with those of ride and concession operations. The director found that the job descriptions demonstrated that the beneficiaries' work will be primarily independent of the cultural component of the international cultural exchange program. The director found that any cultural duties associated with the participants' main job functions would be tangential to the primary role of operating rides and concession stands. In addition, the director emphasized that 10-20% of the participants' time would be devoted to cultural activities while 80-90% of the time would be allocated to ride or concession operations.

The director acknowledged the cultural activities that have been integrated into the ride and concession functions, but found that the cultural expectations are incidental to the work component. The director concluded that the petitioner failed to demonstrate that the work component serves as a vehicle to achieve the objectives of the program's cultural component, or that the sharing of South African culture will result from the employment.

After careful review of the record, the AAO concurs with the director's conclusion 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). Specifically, the petitioner failed to establish that the beneficiary would be engaged in employment 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 cultural sharing among the participants and the public would be tangential to the alien's employment, and the majority of the bona fide cultural activities would be independent of the work component of the program. Accordingly, the petition will be denied.

As a preliminary matter, however, the AAO notes that the petitioner indicated that it made a decision to "entirely reformulate" the beneficiaries' job descriptions and positions upon receipt of the RFE issued on January 5, 2009. 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See e.g., Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner essentially conceded that it was implementing changes to its proposed cultural exchange program in order to cure the possible deficiencies identified by the director. Under the circumstances, the director would have been justified in limiting his review of the record to the petitioner's initial evidence.

If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more

specificity to the original duties of the proposed positions and their cultural components, but rather was presented as a redesign of the entire Q-I program.

Furthermore, the AAO finds it reasonable to question whether the petitioner and its corporate office officially and formally implemented the changes to the program in the approximately two-week period that elapsed between the issuance of the RFE and the petitioner's response. For example, the petitioner indicates that implementation of the "Global Village" concept will require changes to the park's "layout and super structure," but does not provide any documentation of proposed changes and timelines for completion. The petitioner proposes a "South African Kitchen," restaurant but does not indicate whether it will convert a current restaurant or build a new one in the "Global Village" area. It has not submitted a revised park map showing which area will be dedicated to the Global Village or where the proposed cultural activities will take place. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Again, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See e.g., Matter of Izummi*, 22 I&N Dec. at 176.

In addition, the petitioner has not provided evidence that it has informed the beneficiaries of the changes to the program. The beneficiaries signed the six-page "Q-1 Cultural Exchange Visa Program Description and Agreement," prior to the filing of the petition. Such agreement indicates that they will serve as "Amusement and Recreation Attendants" who may be assigned to water rides, dry rides, concession operations, food service, retail, or park services areas, with the opportunity to potentially work in various positions throughout the park. The petitioner has not provided evidence that the beneficiaries have been advised of and agreed to the terms of the "entirely reformulated" job descriptions and positions referenced in the RFE response.

The changes the petitioner made to the program and positions are significant, as some of the positions initially described as possible job assignments, such as life guard, guest first services, or park services employees, would appear to have relatively little interaction with the public. A lifeguard is expected to vigilantly watch swimmers and would not believably be expected to dress in a country-specific costume or address park guests with cultural facts while performing his or her duties. Similarly, an employee assigned to picking up trash from park grounds or cleaning restrooms would not be engaged in face-to-face interaction with guests. An employee assigned to selling tickets for admission into the park would be expected to move customers quickly through the line and would likewise have little opportunity to engage individual guests in cultural discussions. The beneficiaries were initially intended to be scattered throughout the park, meeting for an opening ceremony, and twice daily cultural demonstrations. There were no other clearly scheduled daily events, rather it was clear that the participants would be primarily involved in operating rides, concession stands, games or park services. Based on the petitioner's initial evidence, the cultural activities were incidental to whatever typical amusement park job duties the beneficiaries were assigned. The petitioner failed to

establish at the time of filing that the beneficiaries would be engaged in employment of which the *essential element* is the sharing with the American public.

Regardless, even assuming *arguendo* that the "Global Village" concept had been in place and properly documented at the time of filing, the AAO concurs with the director's determination that the positions of "Global Village Ride Greeter" and "Concessions Greeter" are independent of the petitioner's 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. 8 C.F.R. § 214.2(q)(3)(ii)(B). The work component must serve as the vehicle to achieve the objectives of the cultural component. 8 C.F.R. § 214.2(q)(3)(ii)(C).

The petitioner's program is structured in such a way that the only *bona fide* cultural programs and activities would (1) account for a very small portion of the participants' time; and (2) occur in the form of cultural demonstrations separate from the responsibilities of operating a ride or concessions stand. The AAO is not persuaded that such elements as wearing a name tag identifying a person's country of origin, announcing a cultural event, handing out a flyer, wearing native clothing, speaking a few words in a foreign language, or offering a "fun fact" about South Africa will result in any meaningful exhibition or explanation of the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. Based on the evidence of record, the beneficiary's "cultural duties" during 76% of their shift will be limited to this type of superficial interaction with park guests while they, for example, operate rides according to strict safety guidelines. The remaining 24% of the shift will involve opening and closing procedures with no cultural component. The petitioner indicates that the beneficiaries will spend only 12% of their time on "days scheduled" participating in cultural demonstrations, rather than primarily participating in cultural programs on a daily basis.

Accordingly, the AAO must conclude that the primary purpose of the petitioner's international exchange program is to sell food and operate rides rather than provide a cultural exchange program. 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). The presence of the foreign employees may contribute to the guests' overall experience at the park, and the Q-1 employees may participate to a greater extent in cultural-based activities than, for example, J-1 or H-2B visa holders working at the park. However, the fact remains that the participants will be spending the vast majority of their time on a daily basis either opening, closing or operating rides and concessions stands, during which periods their cultural interaction with park guests will be limited to informal and superficial cultural exchanges.

The AAO acknowledges the petitioner's claim that it would hire American workers, J-1 workers or H-2B workers if it simply required labor to operate rides and concessions. However, the record contains a Microsoft Power Point presentation prepared by the petitioner's corporate headquarters which indicates that "international staffing is an operational necessity during 'shoulder' staffing periods," and "the J-1 visa cannot cover both 'shoulder periods.'" Given the apparent necessity of international staffing, the petitioner clearly intends to utilize the Q-1 program to overcome staffing challenges for its basic employment positions.

Based on the foregoing discussion, the petitioner has not established that its cultural exchange program satisfies the cultural and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(ii)(B) and (C). Accordingly, the petition will be denied.

The AAO acknowledges that USCIS has previously approved similar Q-1 cultural exchange program petitions filed by other Six Flags parks. It is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approval would constitute material and gross 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 USCIS 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). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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 filed by the 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).

Based on the lack of required evidence of eligibility in the current record, and in light of the petitioner's decision to make material changes to the petition in responding to the RFE, the AAO finds that the director was justified in departing from the previous petition approvals granted to related entities by denying the instant petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director's certified decision dated February 5, 2009 is affirmed. The petition is denied.