U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

A10

DATE: DEC 12 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking 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 states that it is engaged in management. The petitioner seeks to employ the beneficiaries temporarily in the United States for a period of 15 months.

The director denied the petition on December 10, 2010, based on the petitioner's failure to submit any initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system. As such, the director noted that the petitioner did not establish that the beneficiaries are eligible for classification as aliens coming to participate in a Q-1 International Cultural Exchange Program.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that, because the petitioner's Q-1 International Cultural Exchange Program was approved by USCIS in the calendar year in which the petition was filed, the petitioner was not required to submit any initial evidence or supporting documentation in support of the instant petition. The petitioner contends that pursuant to the regulation at 8 C.F.R. § 214.2(q)(4)(iii), supporting evidence must only be submitted under such circumstances if USCIS issues a request for additional documentation. The petitioner emphasizes that, as the director did not issue a request for additional evidence, the petition was improperly denied. The petitioner submits a brief and extensive documentary evidence in support of the appeal.

I. The Law

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

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.

The regulation at 8 C.F.R. § 214.2(q)(4)(i) further states:

Documentation by the employer. To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

(A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;

(B) Has designated a qualified employee as a representative who will be responsible for administering the international exchange program and who will serve as a liaison with the Immigration and Naturalization Service;

(C) Is actively doing business in the United States;

(D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and

(E) Has the financial ability to remunerate the participant(s).

The regulation at 8 C.F.R. § 214.2(q)(4)(ii) provides:

(A) The petitioner must give the date of birth, country of nationality, level of education, position title, and a brief job description for each international cultural exchange visitor included in the petition. The petitioner must verify and certify that the prospective participants are qualified to perform the service or labor, or receive the type of training, described in the petition.

(B) The petitioner must report the international cultural exchange visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.

Finally, the regulation at 8 C.F.R. § 214.2(q)(4)(iii) states:

Supporting documentation as prescribed in paragraphs (q)(4)(i) and (q)(4)(ii) of this section must accompany a petition filed on Form I-129 in all cases except where the employer files multiple petitions in the same calendar year. When petitioning to repeat a previously approved

> international cultural exchange program, a copy of the initial program approval notice may be submitted in lieu of the documentation required under paragraph (q)(4)(i) of this section. The Service will request additional documentation only when clarification is needed.

II. Discussion

The issue in this matter is whether the director appropriately denied the petition based on the petitioner's failure to submit documentary evidence in support of its electronically-filed petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on September 10, 2010. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

> Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

The regulation at 8 C.F.R. § 103.2(b)(1) states:

> An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

> *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

Relying on these regulatory provisions, the director denied the petition on December 10, 2010 based on the petitioner's failure to submit the required initial evidence. The director allowed the petitioner 84 days to submit supporting documentation in support of its electronically-filed petition.

On appeal, the petitioner, citing 8 C.F.R. § 214.2(q)(4)(iii), asserts that the company's Q-1 international cultural exchange program is already approved by USCIS, and therefore, the petitioner was not required to submit any initial evidence or supporting documentation in support of the instant petition unless such evidence was requested by the director.

The petitioner's argument is unpersuasive for two reasons. First, the AAO emphasizes that the regulation at 8 C.F.R. § 214.2(q)(4)(iii) does not completely exempt a Q-1 petitioner from submitting any supporting documentation in support of an individual Form I-129. Rather, the cited regulation exempts the petitioner from submitting as initial evidence the information and documentation required by 8 C.F.R. § 214.2(q)(4)(i). Nevertheless, the regulation at 8 C.F.R § 214.2(q)(4)(iii) specifically requires the petitioner to submit a copy of the initial program approval notice from the same calendar year on which the petitioner seeks to rely. Without a copy of such notice, USCIS had no basis to conclude that the petitioner sought to rely on a previous approval to satisfy the requirement at 8 C.F.R. § 214.2(q)(4)(i). Further, there is nothing in 8 C.F.R. § 214.2(q)(4)(iii) that exempts any petitioner from the certification requirements set forth at 8 C.F.R. § 214.2(q)(4)(ii)(A) and (B). The petitioner did not provide the beneficiaries' proposed job titles or job descriptions, but rather referred USCIS to "see supporting documents" that were never submitted.

Second, the regulation at 8 C.F.R. § 214.2(q)(4)(iii) only provides an exemption to those Q-1 petitioners who can show that their international cultural exchange program was approved in the same calendar year. The instant petition was filed on September 10, 2010. On appeal, the petitioner submits copies of three Forms I-797 Approval Notice for Q-1 Classification petitions approved by USCIS in 2009, but it has not provided evidence that the petitioner filed an approved Q-1 petition in 2010. Therefore, pursuant to 8 C.F.R. § 214.2(q)(4)(iii) the petitioner was required to submit all initial evidence required by regulation at the time of filing this petition.

The AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper. Accordingly, the appeal will be dismissed.

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 appeal is dismissed.