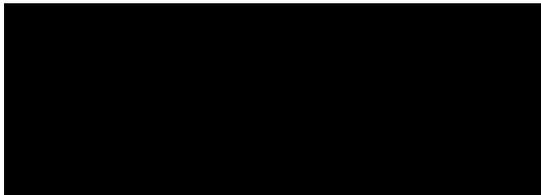




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

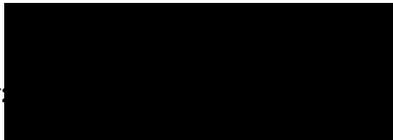
PUBLIC COPY



D10

FILE: EAC 04 124 51537 Office: VERMONT SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner:
Beneficiary:



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:



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.

Mai Johnson

5 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont 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 Turkish restaurant. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of 14 months as a Turkish cooking instructor. The petitioner seeks designation of its Turkish cooking classes 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 international cultural 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.

On appeal, counsel for the petitioner asserts that the decision is not supported by the statute or the regulations.

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.

* * *

(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 Citizenship and Immigration Services (CIS), under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. The director determined, in part, that the petitioner failed to establish that there is an actual international cultural exchange program in which aliens from abroad *regularly participate*. This portion of the director's decision shall be withdrawn. Pursuant to 8 C.F.R. § 214.2(p)(3)(i), the Form I-129 nonimmigrant worker petition must be used to seek approval of the program and authorization to employ one or more aliens. As such, there is no requirement that the cultural exchange program already have the regular participation of aliens. The director further found that the petitioner failed to establish that its international cultural exchange program has a cultural component, as required by 8 C.F.R. § 214.2(q)(3)(iii)(B). The petitioner is a Turkish restaurant that proposes to employ the beneficiary on a part-time basis as an instructor of Turkish cooking.

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 petitioner established that the exchange program could have an essential and integral cultural component. The beneficiary would demonstrate Turkish cooking customs, and traditions. The beneficiary is a Turkish citizen. According to the evidence on the record, the cultural component is designed to demonstrate the culinary traditions of the international cultural exchange visitor's country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). However, the petitioner's proposed program would only come into fruition if members of the public expressed interest in taking the offered courses at a fee of \$125 per three-hour session. If no members of the public sign up for the cooking sessions, the program will not take place. In addition, based on the petitioner's conflicting evidence regarding the proposed timing of the sessions, it is unclear when and where the program would take place. In a letter dated February 13, 2004, the petitioner claimed that it would offer lessons just two days a week: on Monday from 10 am to 4 pm, and on Saturday from 10 am to 2 pm. In an undated outline of the "Q-1 Program" submitted with the Form I-129, the lessons are stated to be "approximately three hours long and are scheduled on Saturday, Sunday and Monday." Hence, the accessibility, cultural and work components of the program are uncertain.

Beyond the director's decision, the petitioner failed to establish that the beneficiary is qualified to perform the proposed work as required by 8 C.F.R. § 214.2(q)(3)(iv). The petitioner submitted evidence that the beneficiary

entered the United States as a B-2 nonimmigrant visitor on April 29, 2003 and that his nonimmigrant status was extended from October 29, 2003 to April 28, 2004. The petitioner also submitted evidence in the form of a letter that states that the beneficiary was employed as an executive chef between the dates of July 12, 1998 and October 3, 2003 at the [REDACTED] and [REDACTED]. There is a discrepancy as to when the beneficiary was employed as a chef in Turkey. According to the evidence, the beneficiary was working in Turkey as a chef and was in the United States as a nonimmigrant visitor. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner failed to resolve this inconsistency. This inconsistency undermines the credibility of the evidence; hence, the petitioner failed to establish that the beneficiary is qualified to perform the proposed work.

Further, the petitioner failed to establish that it has the ability to remunerate the beneficiary. On the Form I-129, the petitioner claimed that it would pay the beneficiary a weekly salary of \$360 per week (\$18,720 per year). In a letter dated February 13, 2004, the petitioner claimed that it would pay the beneficiary \$20 per hour for 10 hours of work each week, or \$200 per week (\$10,400 per year). In response to a March 30, 2004 request for evidence, counsel reverted to the petitioner's initial claim and advised that the beneficiary would be paid \$30 per hour for 12 hours of work per week. Based on this conflicting information, the petitioner has not established the wage that it would pay the beneficiary. *Matter of Ho*, 19 I&N Dec. at 591-92.

As evidence of its ability to remunerate the beneficiary, the petitioner submitted two monthly bank statements and a partial copy of an income tax return. The bank statement for the period ending on March 25, 2004, shows that the petitioner's account has a balance of \$3,705.08; the bank statement for the period ending on April 27, 2004, shows an account balance of \$3,949.90. The incomplete income tax return is for 2002; however, the petition was filed on March 22, 2004. The evidence is insufficient to establish the wage that the petitioner intends to pay, the number of hours that the beneficiary will work, and that the petitioner has the financial ability to remunerate the beneficiary at either of the stated rates as required by the regulation at 8 C.F.R. § 214.2(q)(4)(i)(E). For these additional reasons, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. § 1362. Here, that burden has not been met.

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.