

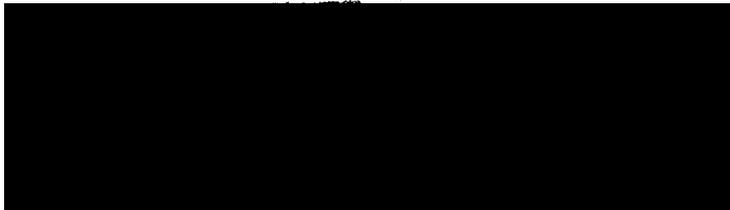
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U.S. Citizenship  
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Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 13 2005

IN RE: Petitioner: [redacted]  
Beneficiaries: [redacted]

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.

*Mai Johnson*

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 and the director's decision will be affirmed.

The petitioner provides training of foreign hospitality workers for placement at various hotels, and resorts throughout the United States. The petitioner seeks to employ the beneficiaries temporarily in the United States for a period of fifteen months as "cultural ambassadors" or "hospitality trainees" within a resort hotel. 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 its program meets the statutory and regulatory requirements of an international cultural exchange program. The director determined that the petitioner had failed to establish that the beneficiaries would be engaging in employment or training of which the essential element is the sharing the cultures of their respective countries of nationality with the American public.

Counsel for the petitioner submits a brief on 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.

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 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 petitioner must establish that its proposed program possesses all three of the requisite components listed above.

The director determined that the petitioner failed to establish that the cultural aspect of the program is an essential and integral part of the employment or training and that the beneficiaries employment or training would not be independent of the cultural component.

Counsel for the petitioner asserts that it has developed a "comprehensive cultural exchange program." The petitioner described the cultural component of its program in its training manual:

The [petitioner's] cultural exchange program provides daily, weekly and monthly activities, festivals, spotlights, socials and special events. All activities and programs emphasize and encourage cross-cultural learning. As cultural representatives of your country, [Cultural] Ambassadors have the prestigious role to share their customs, heritage, philosophy and traditions of their culture. This is accomplished through your practical training at your host property and your daily interaction with the American public, fellow trainees, and resort guests.

Each trainee is required to participate . . . [in] the following cultural exchange events:

1. Daily cultural events
2. Appreciation and fellowship socials
3. Cultural Spotlight/promotion
4. Service Learning project or cultural project

In its training manual, the petitioner describes each type of cultural exchange event. The petitioner wrote that the beneficiaries would share their cultural, history and traditions daily through their work, training and community

involvement. The petitioner indicated that it hosts five socials each year for its trainees in addition to monthly socials in which different cultures are spotlighted and celebrated. Finally, the petitioner stated that it encourages all of its trainees to participate in their community through volunteer “service learning activities” to promote “international understanding and goodwill.”

The petitioner was vague in explaining how the beneficiaries would share their culture through their work and training. In response to the director’s request for additional evidence (RFE), the petitioner stated “the beneficiary’s [sic] will be sharing their cultural [sic] with the American Public through their practical training program. The beneficiary’s on this petition will be working in guest service positions within a resort hotel.” The petitioner provided CIS with a job description for Cultural Ambassadors in guest service departments, which states: “As a Cultural Ambassador you will be working in guest service in the rooms and/or food and beverage department. The way you perform your [sic] job is cultural in nature.”

It is unclear how a beneficiary might share their cultural values while making beds or taking beverage orders or even registering guests.

The petitioner further indicated on the same job description that one essential job duty, among others, is the registration process, which includes: “greet and registers members, guests, visitors and general public in a manner and language that is traditional and/or custom of participant’s country of residence. Provides prompt and courteous service, complete registration process.” The description states that the Cultural Ambassadors will “wear cultural flag pins, cultural ambassador nametag and/or cultural costume.”

The petitioner’s socials provide a forum for the beneficiaries to socialize among themselves. It is not apparent whether and how this component of the program would be open to the public. It appears that the socials are not an integral component of the training and employment.

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 ambassadors/hospitality trainees. The petitioner contracts with hotels and resorts to place cultural ambassadors at different locations. The petitioner’s program does not have an essential and integral cultural component. The beneficiaries would work in the hospitality industry and would wear cultural flag pins, nametags and/or costumes. The petitioner provided an example of a beneficiary working at a hotel desk, registering guests while wearing a native costume and a name pin identifying her country of origin. This example involves a degree of cultural exchange, but it is incidental. The primary purpose of the petitioner’s international exchange program is to secure inexpensive labor for the hotel industry, 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).

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 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 petitioner noted that CIS approved other petitions that had been previously filed by the petitioner. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same evidence that is contained in the current record, the approval would constitute 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 CIS 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).

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 on behalf of the beneficiary, 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).

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.