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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

b10

[redacted]

FILE: EAC 05 241 52440 Office: VERMONT SERVICE CENTER Date: MAY 02 2006

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

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 camp serving the developmentally disabled. The petitioner seeks to again employ the beneficiary temporarily in the United States as a camp counselor. The petitioner seeks designation of its program 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 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. The director found that the petitioner failed to designate a qualified employee or representative responsible for administration of its international cultural exchange program. The director further found that the alien would not be engaging in employment of which the essential element is the sharing of the culture of the alien's country of nationality. The director further found that the work component of the petitioner's program was independent from the cultural component.

On appeal, counsel for the petitioner submits a brief and additional evidence in support of its 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 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.
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> (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 satisfied the requirement to designate a qualified employee or representative responsible for administration of its international cultural exchange program as required by 8 C.F.R. § 214.2(q)(4)(i)(B). On appeal, the petitioner indicates that the petitioner's executive director has been designated as the qualified employee. The petitioner has overcome this objection of the director's to approving the petition.

The second 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. To be eligible for such designation, the petitioner must establish that its proposed programs satisfies the requirements at 8 C.F.R. § 214.2(q)(3).

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).

First, the exchange program does not have an essential and integral cultural component. The petitioner states that its foreign counselors share their respective cultures with the petitioner's students on a daily basis. The petitioner provided examples in its newsletter, *The Horizon Line*. The newsletter contained the photographs of staff and students with the following captions:

- "Ling takes campers on an educational tour through Malaysia during International Day."
- "Gugu Zondi, a counselor from South Africa, [the beneficiary] wore her native Xhosa outfit. Gugu is braiding [a] camper's hair at the Face Painting and Hair Braiding Booth."
- "Counselor Mee-Kyeong Lee in her native dress from South Korea . . . get[s] a SnoCone . . . ."

- "Svetlana . . . from Kazakhstan works with campers . . . to paint a trellis."

- "Counselors from Zambia and Uganda tell a story with their African dance."

The evidence does not establish that the foreign counselors share their culture on a daily basis. The petitioner's program's cultural component is evident at special events sponsored by the petitioner on an intermittent, rather than a regular, basis. Further, the Kazakh counselor described above was not sharing her culture while demonstrating trellis painting.

The primary purpose of the petitioner's international exchange program is to provide care for the developmentally disabled, rather than to 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). In the instant case, the foreign counselors share their own cultures with their students and the general public periodically, but the cultural component of the employment is tangential to the petitioner's primary purpose of providing care to the developmentally disabled. The statute and the regulations require that the alien be coming to the United States to engage in employment of which the *essential element* is the showing of the alien's country of nationality. The petitioner has failed to establish that the essential element of the beneficiary's employment is to share her culture.

Similarly, the beneficiary's work is largely independent of the cultural component of the international cultural exchange program. Although the job description states that the counselor shall share "the history, attitudes, customs, etc. of their home country" on a daily basis, the evidence on the record is insufficient to establish that the foreign counselors share their respective cultures with either their students or the public on a regular basis.

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.

On appeal, counsel for the petitioner asserts that CIS approved other petitions that had been previously filed on behalf of the beneficiary and other employees. 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 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 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).

Counsel further asserts that the director may have denied the petition because the request for evidence received by the petitioner was only a single page document; additional evidence that might have been requested on a subsequent page would have established that the petition is approvable. The petitioner was not prejudiced by a one-page request for evidence. The petitioner had the opportunity on appeal to submit whatever evidence the director found lacking. Counsel's assertion is not persuasive.

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.