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**U.S. Citizenship
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Services**

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FILE: SRC 05 800 11244 Office: TEXAS SERVICE CENTER Date: **MAY 03 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Texas Service Center Director because the petitioner failed to respond to the director's request for additional evidence. The petitioner filed a motion to reconsider. The director granted the motion and reaffirmed his decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner¹ seeks to employ the beneficiary temporarily in the United States for a period of 15 months. 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 the petitioner's program does not qualify as a cultural exchange program as defined by the Act and regulations.

On appeal, the petitioner submits a statement. The petitioner requests an opportunity for oral argument.

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.

¹ This office has referred to the petitioner as a hospitality entity in the past, but the petitioner asserts it is not a hospitality entity even though the record contains copies of letters in which the petitioner's president states "we are a group of international hoteliers who are committed to promoting cultural and ethnic diversity in our society."

* * *

(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 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 its international cultural exchange program has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment or training, as required by 8 C.F.R. § 214.2(q)(3)(iii)(B).

The petitioner submitted the following documentation:

- Copies of notices of approval (Form I-797) of petitions previously filed by the petitioner.
 - A letter from the recruitment manager of the petitioning organization describing its program.
 - GHE's [petitioner's] Structural Training Plan (GSTP).
- An unpublished decision of the AAO.

- A copy of several pages from the petitioner's website.
- Training materials.
- A program itinerary.
- Flyers about events.
- A copy of an e-mail from the Vice Consul Corina Sanders at Seoul, South Korea.
- Copy of e-mails regarding the petitioner's cultural exchange webinar.²
- Evidence of events³ hosted by the petitioning organization and other organizations including affiliates. Photographs of participants at such events, the majority of which are illegible; some are captioned and others are not.
- Letters from affiliates of the petitioning organization.
- Testimonials from program participants regarding their activities in the United States.
- Miscellaneous forms (performance review, interview, participant agreement).
- The beneficiary's Form I-20.
- An unpublished AAO decision.
- Copies of letters mailed to local ethnic groups.

The petitioner submitted copies of approval notices (Form I-797) for petitions filed by the petitioner.

According to the petitioner's plan, it "presents foreign cultures to the American public during the course of a normal business day" by encouraging the beneficiary to wear "culturally proud nametags," and native dress on national holidays, to display maps and souvenirs of their home country and to plan and stage celebrations of their own culture. The petitioner states that by displaying symbols of their cultural heritage, the program participants evoke questions from the hotel guests, thereby providing an opportunity for cultural exchange.

Some events were co-sponsored by the petitioner and other entities. For example, the petitioner and the African Lady Shop sponsored two events, a fashion show and an African Cultural Heritage festival. Another event was jointly sponsored by the petitioner and the International Student Association at Furman University that included a performance by "Elvis of the East." One event was billed as "Cap'n Sam DJs playing music from all around the world." Program participants made power point presentations on their countries of origin. These evening events typically were held from 6 to 9 pm.

Some of the flyers advertised events held at the petitioner's affiliates' place of business. An event titled "Brazilian Night" was held at the Wingate Inn in Marietta, Georgia. Another flyer advertised an International Christmas Celebration at the Holiday Inn Oceanfront, Hilton Head Island, South Carolina.

The petitioner submitted photographs, the majority of which were illegible. One photograph taken at the event co-sponsored by the International Student Association is captioned: "This musical evening . . . was open to the public and was attended by over 400 Americans." A number of the photographs' captions do not indicate when or where the photographs were taken.

² The term webinar is used for chat room.

³ Including flyers.

In review, the evidence indicates that the great majority of cultural exchange activity took place outside of work hours and that the total time allocated to such activity was insignificant in relation to the total amount of time participants spent at their work sites.

The petitioner submitted evidence of a webinar it developed for the participation of program participants. The evidence indicates that the petitioner created the webinar as a chat room for program participants. There is no evidence that the program participants would share their cultural with the American public using this chat room. Even if the chat room were accessible to the American public, the potential for cultural exchange is negligible, nor would it be necessary to bring individual aliens to perform this type of exchange.

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) because the petitioner failed to establish that the beneficiary would be engaged 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 amount of culture sharing among the participants and the public would be tangential and negligible. Accordingly, the petition may not be approved.

The petitioner noted that CIS approved other petitions that the petitioner had previously filed on behalf of 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 assertions that are 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 regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of

proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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.