U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: SRC 05 800 32764 Office: TEXAS SERVICE CENTER Date: MAY 10 2006

IN RE: Petitioner:
Beneficiaries: [redacted]

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:

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.

Marie Johnson

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 petitioner in this matter is a hospitality services company. The petitioner seeks to employ the beneficiaries 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).

Finding the evidence insufficient to establish eligibility, on October 25, 2005, the director requested the petitioner to submit additional evidence. The petitioner responded to the request.

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.

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 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:

- A letter from the recruitment manager of the petitioning organization describing its program.
- GHE's [petitioner's] Structural Training Plan (GSTP).
- A print-out from the petitioner's website.

- Copy of e-mails regarding the petitioner's cultural exchange webinar.[1]
- Evidence of events[2] hosted by the petitioning organization and other organizations including affiliates. Photographs of participants at such events, some of which are illegible.
- 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).
- Copies of letters mailed to local ethnic groups.
- A sample of a power point presentation.

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. One such event was jointly sponsored by the petitioner and the International Student Association at Furman University. The program included a performance by "Elvis of the East." 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, some of which were illegible.

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.

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[1] The term webinar is used for chat room.

[2] Including flyers.

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 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.