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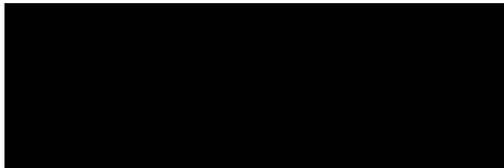
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: WAC 08 800 08654 Office: CALIFORNIA SERVICE CENTER Date: APR 22 2009

IN RE: Petitioner:  
Beneficiaries:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks designation of her 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 petitioner seeks to employ the beneficiary as a child care worker for her two children in her private residence for a period of 19 months.<sup>1</sup>

The director denied the petition, concluding: (1) that the petitioner is not a qualified employer as that term is defined at 8 C.F.R. § 214.2(q)(1)(iii); and (2) that the petitioner's program is ineligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act.

On appeal, the petitioner contends that it is unclear to her, based on the director's decision, which requirements the proposed program failed to meet. The petitioner nevertheless asserts that all requirements for the Q-1 visa were met and requests that the petition be approved.

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

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(q)(3)(ii), a petition for an international cultural exchange program will be approved for the duration of the program, which may not exceed 15 months, plus 30 days to allow time for the participant to make travel arrangements.

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 definitions at 8 C.F.R. § 214.2(q)(1)(iii) provide, in pertinent part:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

*Qualified employer* means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates and franchises) which administers an international cultural exchange program in accordance with the provisions of section 101(a)(15)(Q)(i) of the Act.

The first issue to be addressed is whether the petitioner established that she is a qualified employer as defined at 8 C.F.R. § 214.2(q)(1)(iii).

As a preliminary matter, the AAO acknowledges the petitioner's claim on appeal that the director failed to clearly articulate the specific reasons for denial in her decision dated June 7, 2008. The director stated that the issue to be discussed "is whether the petitioner established that it is a United States employer." The director provided the regulatory definitions for "qualified employer," "petitioner," and "doing business," pursuant to 8 C.F.R. § 214.2(q)(1)(iii), but never clearly explained why the petitioner does not fall within the definition of "qualified employer" for Q-1 purposes.

The AAO agrees that the reasons given for denial are unclear, with few specific references to the evidence entered into the record. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). However, as discussed further below, there is clear evidence of ineligibility in the record, and it would serve no useful purpose to remand the petition to the director for issuance of a new decision.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Accordingly, the AAO will herein address the petitioner's evidence and eligibility.

The petitioner in this matter is a U.S. permanent resident, who describes herself as a "household" established in 2000, with gross annual income of \$100,000 and no employees. A "qualified employer" for Q-1 purposes means "a United States or foreign firm, corporation, non-profit organization, or other legal entity." 8 C.F.R. § 214.2(q)(1)(iii). *Black's Law Dictionary* defines a "legal entity" as "a body, *other than a natural person*, that can function legally, sue or be sued, and make decisions through agents." *Black's* p. 903 (7<sup>th</sup> ed. 1999) (emphasis added). An individual person or household is not a firm, corporation, non-profit organization or legal entity and therefore is not a "qualified employer" eligible to file a petition for a Q-1 international cultural exchange program.

The "qualified employer" must also be actively doing business in the United States. *See* 8 C.F.R. § 214.2(q)(4)(C). Doing business means the regular systematic, and continuous provision of goods and/or services by a qualified employer which has employees. 8 C.F.R. § 214.2(q)(1)(iii). The petitioner is not "doing business" nor does she have employees. The petitioner is a parent seeking full-time childcare for her infant daughters in her private residence.

Therefore, the petitioner is not a qualified employer for the purposes of this visa classification, and the appeal will be dismissed.

The second issue to be addressed in this in this proceeding is whether the petitioner established that its proposed program is eligible for designation by USCIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. The petitioner must establish that it has a cultural exchange program which: is accessible to the public; has a cultural component which is an essential and integral part of the international cultural exchange visitor's employment; and has a work component which serves as the vehicle to achieve the objectives of the cultural component and is not independent of the cultural component of the international cultural exchange program. *See* 8 C.F.R. § 214.2(q)(3)(iii).

The petitioner seeks to employ the beneficiary as a full-time child care worker for her twin daughters born in November 2007. The beneficiary would work in the petitioner's private residence. The petitioner indicates that the beneficiary, the petitioner's sister, is trained in child care, has previously worked in the field, and is very trustworthy. The petitioner states that the beneficiary "is looking at this opportunity to live with us and share the cultural experience of living in the US."

The director determined that the proposed program does not meet the requirements for approval of an international cultural exchange program, but did not specifically address the individual requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii).

On appeal, the petitioner asserts that her proposed international cultural exchange program meets all regulatory requirements, but notes that it was unclear based on the director's decision which requirement(s) she failed to meet. Again, the AAO's review is conducted on a *de novo* basis, and the AAO will herein address the petitioner's evidence and eligibility.

Pursuant to 8 C.F.R. § 214.2(q)(3)(iii)(A), the petitioner must establish that its international cultural exchange program will 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. The regulation explicitly states that "activities that take place in a private home . . . do not qualify." *Id.*

Here, the beneficiary's proposed activities will take place exclusively in a private home. The petitioner cannot satisfy the regulation at 8 C.F.R. § 214.2(q)(iii)(A) because the proposed employment will not be accessible to the public.

Pursuant to 8 C.F.R. § 214.2(q)(3)(iii)(B), the petitioner must establish that its international cultural exchange program has a cultural component which is an essential and integral part of the beneficiary's employment. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the beneficiary's country of nationality.

The petitioner has not indicated that the beneficiary will be employed in a structured program with a cultural component that is essential and integral part of the beneficiary's employment. The petitioner indicates that the beneficiary will "share the cultural experience of living in the US," and made no indication that the beneficiary will share her own culture as an essential and integral part of her employment as a childcare worker responsible for two infants. The petitioner and her spouse state that they desire a certified, trustworthy

childcare worker who is trained in CPR and first aid. They do not claim that the proposed employment will have a cultural component.

Finally, pursuant to 8 C.F.R. § 214.2(q)(3)(iii)(C), the petitioner must establish that the work component of the program serves as a vehicle to meet the objectives of the cultural component of the international exchange program, and is not independent from the cultural component. The sharing of the culture of the beneficiary's home country must result from her employment with the petitioner.

Again, the petitioner is requesting the beneficiary's services as a childcare worker, and the petitioner has not indicated that there will be any sharing of the beneficiary's culture during the course of her employment. Therefore, it cannot be concluding that the beneficiary's employment would serve as a vehicle to meet any cultural objectives.

For all of these reason, the petitioner has not established that its proposed international cultural exchange program meets the requirements for program approval set forth at 8 C.F.R. § 214.2(q)(3)(iii). According, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.