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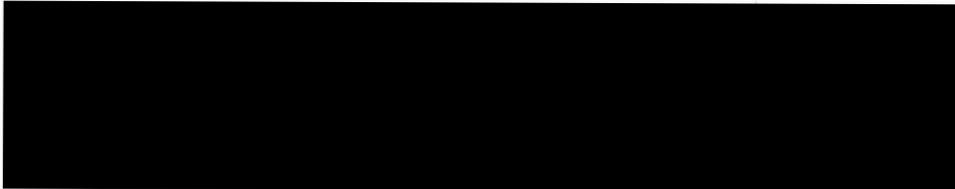
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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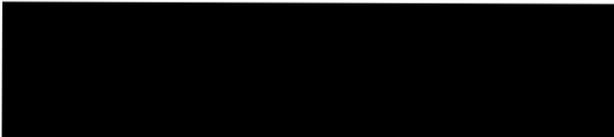
FILE: WAC 06 267 50774 Office: CALIFORNIA SERVICE CENTER Date: APR 22 2009

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:



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 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 petitioner, a youth soccer club, seeks to employ the beneficiary as a part-time soccer director of its "Team Chicago West" soccer program for a period of 15 months.

The director denied the petition, finding that the petitioner's program was not a qualifying international cultural exchange program pursuant to section 101(a)(15)(Q)(i) of the Act and the provisions at 8 C.F.R. § 214.2(q)(3). The director found the petitioner did not establish: (1) that it operates an international cultural exchange program that is accessible to the public; (2) that it operates a program with an essential cultural component; or (3) that the beneficiary will be employed primarily to share the culture of her native country of Brazil. The director concluded that the petitioner's main purpose is to provide soccer training to paid clientele and "not to improve the American public's knowledge of Brazilian art, literature, language and tradition."

On appeal, counsel for the petitioner asserts that the petitioner submitted evidence that it meets all requirements for program approval pursuant to 8 C.F.R. § 214.2(q)(3)(iii). Counsel asserts that the petitioner offers a structured cultural program that is open to the "interested American public," that the Brazilian style of soccer to be taught "is recognized as a basis of Brazilian culture," and that the beneficiary's employment is not independent of the cultural component of the petitioner's program. Counsel submits a brief and additional evidence in support of the 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.

* * *

(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 United States Citizenship and Immigration Services (USCIS), under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. The requirements for program approval are set forth at 8 C.F.R. 214.2(q)(3)(iii).

The petitioner filed the nonimmigrant petition on September 15, 2006, indicating its intent to hire the beneficiary as "TC West Soccer Director." In a letter dated August 14, 2005, the petitioner described itself as a youth soccer club established in 1977 that "is known for developing its youth players into highly skilled, technical players through the elite form of Brazilian style soccer." The petitioner described its cultural exchange program as follows:

Under the direction and management of Hudson Fortune, a native of Brazil, the Team Chicago soccer program has become the premier program for training youth players because of the Brazilian style soccer techniques utilized exclusively by the club. Team Chicago currently offers clinics and teams for children ages 7 to 19. Through these clinics and teams, children are introduced to not only Brazilian style of play but also the Brazilian culture. The history of soccer is deeply rooted in Brazil, and the country as a whole has a passion for the game unmatched by any other country. . . . Distinctive for its graceful moves, Brazilian style of play is unique because it is made up of short, quick passes, agility and fast footwork. It is believed this style represents the diversity of the natives of Brazil. To date, over 8,000 children have worked with [the petitioner] to learn and hone soccer skills taught in the Brazilian style. As part of this particular style of coaching, the children are exposed to many other facets of Brazilian culture, as the sport and culture are intertwined.

The petitioner stated that the petitioner will be responsible for "solely instructing the Brazilian style of soccer to youth players of the organization." The petitioner indicated that the beneficiary will direct several teams of children ages 12 through 18 through practices games and a week-long skills camp. The petitioner further described the beneficiary's proposed duties as follows:

[The beneficiary] will emphasize the history and culture behind the Brazilian soccer style, and teach her players to utilize this method. The players enroll with our team through the athletic association specifically to learn the Brazilian style of soccer on the field. [The beneficiary] will also demonstrate Brazilian style soccer moves, explain approaches and teach plays that are unique to the Brazilian method. It is the ultimate goal of each player to hone their skills in order to play on state, national, collegiate and professional teams, and they choose our organization distinctly because we are one of the few to exclusively teach the Brazilian style of soccer.

The petitioner indicated that the beneficiary was a successful soccer player in Brazil, and has continued to play in the United States at the collegiate and semi-professional level.

The petitioner submitted excerpts from its public web site and promotional materials for its club, teams and camps. The petitioner describes itself as being "known nationally for its successful and specialized development of high level young youth teams," and its "notable achievements in development young highly technical skilled players with lots of Brazilian style flare." The materials indicate that participating children will learn "'Brazilian' style soccer." The director and founder of the club is Brazilian, as are several of its coaches. The evidence of record shows that the petitioner also employs American and Jamaican coaches. Finally, the petitioner submitted several articles regarding the popularity of soccer in Brazilian culture and Brazil's dominance in the sport.

The director determined that the petitioner's initial evidence was insufficient to establish that it has a qualifying international cultural exchange program pursuant to 8 C.F.R. § 214.2(q)(3)(iii). Accordingly, the director issued a request for additional evidence on November 13, 2006. The director instructed the petitioner to submit: (1) evidence showing that the petitioner's international cultural exchange program is accessible to the public; (2) evidence showing that the petitioner's international cultural exchange program has a cultural component that is an essential and integral part of the beneficiary's proposed employment; and (3) evidence showing that the

petitioner's international cultural exchange program has a work component that is not independent of the program's cultural component.

In a response dated January 8, 2007, counsel for the petitioner stated that the petitioner's "Team Chicago West" exclusively practices Brazilian style soccer and "is open to all people interested in learning and playing" in that style. Counsel explained that the cultural component of the petitioner's club is its exclusive emphasis on the Brazilian style of soccer, explaining that "[c]oaches utilize only [*sic*] in the Brazilian style in order to give each student a well-rounded approach to the traditional roots of the sport." Counsel further stated:

The Brazilian style of soccer is inherently cultural in nature because it emphasizes Brazilian history, culture and sport. Recognized as the first country to perfect the sport, Brazil and its soccer style is unique to the people and culture of the country itself, and teaching this method of soccer requires the expertise of those that have played soccer in Brazil.

Counsel further stated that the Brazilian cultural component of the petitioner's soccer program is an essential and integral part of the beneficiary's proposed employment:

As Team Chicago West Soccer Director, each of [the beneficiary's] duties are indivisible from the cultural component of the program. As a component of her job, [the beneficiary] will instruct her students on the intricacies of Brazilian style soccer. She will also provide a full explanation of the history of the sport. This club strongly believes that full explanation of the history and cultural aspect of the sport produces well-rounded, more focused athletes. When she teaches and coaches soccer, she will remind students of the history of moves and skills in order to have the student make the connection of the cultural component of soccer and the sport itself.

In particular, [the beneficiary] will be responsible for coaching several teams of children, ages twelve through eighteen. [The beneficiary] will establish schedules for practices and matches and will hold a week long skills camp for the teams exclusively in the Brazilian style. At all initial practices, [the beneficiary] will provide a full orientation and factual description of the history of the Brazilian style of soccer and explain why Team Chicago West will focus on this unique aspect of the sport. She will demonstrate the unique moves of the Brazilian style of soccer, such as the short and quick passes, fast footwork and agility of the players. [The beneficiary] will teach the students these moves, and work with them to perfect all plays. Additionally, she will answer questions about Brazil and how soccer is related to the culture of the country.

The director denied the petition on March 12, 2007, concluding that the petitioner's program is not a qualifying international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3). In denying the petition, the director observed that the petitioner "does not operate a structured program of cultural exchange, the soccer training facility is not open to the general public, without monthly payment of club fees, and the club does not operate a program that has an essential cultural component." Rather, the director concluded that the petitioner's main purpose is to provide soccer training to paid clientele and "not to improve the American public's knowledge of Brazilian art, literature, language and tradition." The director determined that the beneficiary would not be employed primarily to share her culture with the American public.

On appeal, counsel for the petitioner asserts that the director overlooked "significant, probative evidence that Brazilian-style soccer is a robust part of Brazil's tradition." Counsel goes on to discuss how the petitioner submitted evidence to meet each of the program requirements set forth at 8 C.F.R. § 214.2(q)(3).

Counsel asserts that the petitioner's program satisfies the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(A), as it operates a business and holds its program open to all people who are "interested in learning about the Brazilian style of soccer and the cultural components inherent to the sport." Counsel asserts that based on the petitioner's accessibility to the public and "its advertising and marketing of its Brazilian cultural component," the petitioner's program meets the requirements for public accessibility. Counsel emphasizes that the regulations governing Q-1 program certification do not require that the petitioner provide free participation in its program. Counsel asserts that "the Brazilian style of soccer is the aspect of the foreign culture that is accessible to all who are interested in learning."

Counsel further asserts that the petitioner's program satisfies the cultural component requirement at 8 C.F.R. § 214.2(q)(3)(iii)(B). Counsel asserts that the petitioner's program has an essential cultural component that combines "the unique style of Brazilian soccer and the Brazilian tradition as a means of cultural exchange." Counsel asserts that the petitioner's marketing materials and programs demonstrate that the club teaches only the Brazilian style of soccer, which is recognized as "a basis for Brazilian culture."

Finally, counsel asserts that the proposed employment satisfies the work component requirement at 8 C.F.R. § 214.2(q)(3)(iii)(C), because the beneficiary "will only engage in duties related to the teaching of the Brazilian style of soccer and emphasizing Brazilian culture."

Upon review, counsel's assertions are not persuasive. 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 AAO is not persuaded that the program has an essential and integral cultural component. The primary purpose of the petitioner's program is to train young athletes who register for its programs, rather than to 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). The petitioner's focus on Brazilian-style technical skills cannot be equated to "cultural exchange." It appears that the Brazilian style of the sport relies on athletic skills such as short-passing, fast footwork, and surprise attacks and that such skills could be taught by any trained soccer coach who is familiar with the style. The fact that the petitioner employs American and Jamaican coaches in addition to native Brazilians, while claiming to teach exclusively in the Brazilian style, further supports a conclusion that the "Brazilian-style" aspects of the program are ball-handling techniques and tactical game strategies rather than an immersion into some aspect of Brazilian tradition and culture.

Furthermore, other than referencing the term "Brazilian style" in some of its marketing materials, the petitioner does not present itself to the public as an organization offering a Brazilian cultural exchange program. The petitioner does not even explain in its own marketing materials what characterizes the "Brazilian-style" of soccer,

much less claim to offer a program in Brazilian culture, traditions, history or heritage. The petitioner's claim that children enrolled in its programs are exposed to many other facets of Brazilian culture" is not supported by the evidence of record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based upon the information in the marketing materials and on the petitioner's public web site, a person enrolling a child in the program would reasonably expect nothing from the petitioner other than coaching and athletic instruction in technical soccer skills.

Although the petitioner states that the beneficiary will provide "a full orientation and factual description of the history of the Brazilian style of soccer" at initial practices, and be available to answer questions about Brazil and how soccer relates to the culture of the country, this type of cultural interaction is ancillary to the beneficiary's primary responsibility to teach athletic skills and game strategies. The petitioner has not established that the beneficiary will be employed in a structured program with a cultural component that is an essential and integral part of the beneficiary's employment.

For the above reasons, 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). Accordingly, 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.