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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

D10



APR 28 2009

FILE: WAC 06 800 10929 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiaries:



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.

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Georgia corporation, states that it operates a cultural exchange management business. It seeks to employ the beneficiaries temporarily in the United States as cultural coordinators for a period of 15 months by placing program participants at affiliated hotels. The petitioner seeks designation of its program as an international cultural exchange program and classification of the beneficiaries as international cultural exchange visitors 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).

Referring to the eligibility criteria at 8 C.F.R. § 214.2(q)(3), the director reviewed the evidence and concluded that the petitioner had not established that the international cultural exchange program has a structured cultural component that is accessible to the public or that the beneficiaries would be employed primarily to share with the American public the culture of the beneficiaries' countries of nationality. The director further observed that the record was unclear as to where the beneficiaries are to be placed, who would serve as their employer and who would monitor their daily cultural activities. As such, the director found insufficient evidence to establish that the petitioner is a qualifying employer.

On appeal, petitioner asserts that the company is operating a successful cultural exchange program in compliance with Q-1 regulations and has been granted numerous approvals of Q-1 petitions since 2003. The petitioner states that its response to the director's request for evidence was "somehow confusing" and offers additional information to establish its program's accessibility to the public and to further explain how its cultural component satisfies the regulations at 8 C.F.R. § 214.2(q)(3)(B). The petitioner asserts that it supervises and controls the daily cultural activities of all program participants regardless of where they are placed and is a qualified employer for the purposes of this visa classification. The petitioner 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.

I. Proposed Cultural Exchange Program

The first 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 director concluded that the petitioner's program does not meet the regulatory requirements pertaining to the public accessibility, cultural or work components. Specifically, the director determined that the petitioner had not established that the international cultural exchange program

has a structured cultural component that is accessible to the American public or that the beneficiaries would be employed primarily to share with the American public the culture of their countries of nationality.

The petitioner filed the Form I-129 nonimmigrant petition on August 8, 2006, accompanied by the following supporting documentation regarding the petitioner's cultural program:

- A letter dated August 8, 2006 from the petitioner's president, describing its program.
- Copies of Form I-797 Approval Notices, for Q-1 classification petitions approved by USCIS between 2003 and 2006.
- The petitioner's International Cultural Exchange Visitor Program Structural Training Plan (GSTP), which includes a weekly schedule for the 15-month program.
- A copy of the petitioner's "Daily Cultural Activity Checklist" listing 25 activities to be completed by program participants, to be monitored by the property manager and the petitioner's manager.
- Evidence of "events" hosted by the petitioning organization and other organizations including affiliates.¹
- Copies of photographs depicting cultural exchange visitors at work in the petitioner's affiliated hotel properties and attending "managers' receptions" at hotel properties.
- Miscellaneous forms (including End of Training Program Evaluations completed by prior participants' supervisors, and International Participant Interview Forms completed by prior program applicants).
- Copies of letters mailed by the petitioner to Atlanta-based ethnic and international groups in February 2003, inviting them to participate by holding seminars, workshops, meetings or other activities in affiliate hotels.
- Letters from several hotels which have partnered with the petitioner to promote its cultural exchange program. The hotel managers indicate that the petitioner's program participants do not replace or work as substitutes for regular hotel front desk or food and beverage staff.
- Testimonials from prior program participants regarding their cultural exchange activities in the United States.

¹ The evidence submitted consisted of photographs, copies of flyers, and other documentation for the following events: a "Globaganza Multicultural Show" held in May 2006 at an unidentified location which appears to be a hotel banquet or conference room; a "Unity in Diversity" program held on June 30, 2005 at a Comfort Inn Hotel in South Carolina; a "Philippines Cultural Spotlight" held at the Colleton River Plantation Club in Bluffton, South Carolina on October 9, 2005; a "Multicultural Christmas" program held at the Holiday Inn Oceanfront in South Carolina on December 21, 2004; a "Mega Cultural Showcase" held at Furman University in South Carolina in February 2004; an African Gala Fashion Extravaganza held at a recreation center in Charlotte, North Carolina on June 7, 2003; a concert by Alamgeer, "Elvis of the East," held on March 15, 2003 at Furman University in South Carolina; a South Korean Cultural Show held on September 21, 2004; an "International Food Tasting" held at the Holiday Inn Atlanta -Northgate on February 28, 2003; and an "Around the World in Just A Day" event held on August 2, 2003 at the Hilton Head Yacht Club in South Carolina in August 2003.

An e-mail message dated September 30, 2004 from the Vice Consul of the United States Embassy in Seoul, Korea, addressed to the petitioner, stating that the petitioner "is meeting all the criteria set forth by the Foreign Affairs Manual," apparently referencing four Q-1 visa applicants sponsored by the petitioner.

In its supporting letter dated August 8, 2006, the petitioner explained that its cultural exchange program takes place at various hotels and resorts operated by its "Affiliate Cultural Partners" (ACPs). The petitioner emphasized that the beneficiaries will be assigned to hotels and resorts "throughout California" that are "located near major highways and interstates that are easily accessible to the American public."² The petitioner further noted that "[a]ll guests that stay at one of our properties are introduced to various international cultures and presentations in interesting and creative ways that adapt naturally to a hotel or resort." The petitioner indicates that cultural activities are the prime reason for the presence of the participants at the property, while "the employment only serves as a tool" to implement the cultural program. The petitioner notes that it recruits exchange visitors who are currently enrolled in hospitality duties programs abroad, or who are already experience hospitality workers, so that they can easily adjust to the hotel atmosphere and "feel confident about sharing their culture with the guests."

According to the petitioner's plan, its participants "presents foreign cultures to the American public during the course of a normal business day" by encouraging program participants to wear "culturally proud nametags," wear native dress on national holidays, to display maps and souvenirs of their home country, to provide hotel guests with international recipes and brochures, to play international music over the hotel's sound system, and to plan and stage celebrations of their own culture. The petitioner stated that by displaying symbols of their cultural heritage, the program participants evoke questions from the hotel guests, thereby providing an opportunity for cultural exchange. The petitioner further indicated that the participants are expected to invite ethnic groups and associations to the property to put on cultural exhibits, to invite international speakers for seminars and lectures, and to host cultural book discussion events.

As example of its cultural events, the petitioner stated that it holds a cultural history month at ACP properties, during which participants "assemble a model village of artifacts, artwork, flags, music, figurines" in a high traffic area of the hotel. The petitioner stated that the cultural model village is promoted to the general public by the ACP property and by the petitioner.

The petitioner stated that program participants also participate in a "manager's reception presentation" at 5:00 p.m. on most weekdays, which provide a chance for them to talk and mingle with hotel guests and serve international foods. Finally, the petitioner indicated that program participants coordinate an "Around the World in Just One Day," event at the ACP properties on a monthly basis, which is "open to the general public."

The record shows that some past events were co-sponsored by the petitioner and other entities, and held at sites other than the ACP hotels and resorts. 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

² The petitioner indicated on Form I-129 that the eight beneficiaries will work in Norcross, Georgia.

by "Elvis of the East." Another "cultural showcase" required participants to make short presentations on their countries of origin. These evening events typically were held from 6 to 9 pm.

The petitioner's training plan includes the following program description:

Participants work within various departments of these hotel properties to share their culture with hotel guests, gain work experience and hospitality skills. The program is accessible to the American public solely for the purpose of cultural exchange and the participant's work and position cannot be independent of the commitment to share their respective culture with the hotel guests, fellow staff and all contacts.

According to the program schedule, the beneficiaries spend one week upon arrival in the United States at the petitioner's headquarters undergoing orientation and cultural exchange program training, and begin shadowing current program participants' at their assigned property, before beginning to work independently during the fourth week, at which time they will dress in their native costumes, wear nametags, complete a daily checklist, decorate the work environment, and interact with hotel guests. Each month includes one week devoted to planning and implementing a manager's reception. During the second month, the participants are to "organize ideas for cultural presentations" and develop "cultural exchange nametags" to reflect their home country and flag. During month three, the participants form a committee for an International Food Festival and hold the festival for "property guests and public." During the fourth month, the participants are expected to develop cultural history projects and bulletin boards, and during the sixth month, the participants are expected to deliver a cultural customs presentation for guests and public. In the seventh month, the participants are expected to deliver a "culture in travel and tourism" power point presentation in the hotel lobby. During the ninth month, the participants would hold a cultural dress and fashion show at the property after planning, marketing and promoting it. In the eleventh month, the participants are expected to create an "International Gesture Dictionary" for use by the property and share it with staff members. During the 12th month, the participants are to hold a "Season's Greeting cultural event." The participants have a "final cultural exchange program presentation" due at the end of the fourteenth month of the program. The petitioner did not document that prior participants actually accomplished all of the planned cultural activities outlined in the plan or that the events were open to the public.

The director issued a request for additional evidence on August 17, 2006. The director instructed the petitioner to submit evidence that the petitioner's international cultural exchange program is accessible to the public, including evidence of public events, seminars or lectures approved by a local city chamber of commerce, and copies of circular flyers, brochures or notices listing places of distribution for the general public to obtain information regarding events sponsored by the petitioner. The director also requested additional evidence regarding the program's cultural component, and additional descriptions of the work to be performed and/or training to be received by the beneficiaries.

In response, the petitioner submitted a letter dated August 21, 2006, which was identical in content to the petitioner's letter dated August 8, 2006, as well as additional documentary evidence. The petitioner re-submitted a copy of its training plan and "daily cultural activity checklist." The petitioner included an exhibit with "evidence of notices, flyers and memos" issued to notify the public of events sponsored by the organization. The evidence included advertisements, mostly in the form of flyers, publicizing the events that have been held by the

petitioning organization. The events that appear to have been advertised outside the hotel properties included an African Gala held at a Charlotte, North Carolina recreation center on June 7, 2003; an "Around the World in Just a Day" party held at Hilton Head Yacht Club on August 2, 2003; a "Cultural Showcase," held at Furman University on February 9, 2004; the Igunnuku African Heritage Festival held at Frazier Park in Charlotte, North Carolina in September 2005; and a concert by Alamgir held at Furman University in South Carolina on March 15, 2003. The petitioner also submitted notices regarding on-site events held at various hotels, but there is no evidence that such events were advertised outside the individual properties. The petitioner re-submitted much of the same evidence that was submitted at the time of filing, and included photographs of a few more cultural events held at various hotels in 2003, 2005 and 2006. Notably, none of the previous cultural events appear to have taken place at hotel properties located in California, where the beneficiaries would be assigned.

The director denied the petition on September 8, 2006, concluding that the petitioner had not established that the international cultural exchange program has a structured cultural component that is accessible to the public or that the beneficiaries would be employed primarily to share with the American public the culture of the beneficiaries' countries of nationality. Specifically, the director found that the petitioner "failed to submit evidence that a valid structured cultural exchange program exists." The director noted that the program participants appear to work at regular hotel positions, while any cultural aspect of the employment is incidental. The director also emphasized the majority of events appear to take place in hotel banquet rooms, and lack the requisite accessibility to the public.

On appeal, the petitioner asserts that it feels that the service center director "needed more information to review [the company's] program which was somehow confusing in the response to the RFE." The petitioner asserts that "the American public that visits [the petitioner's] ACP Hotel properties comes with a sole objective of meeting the participants and knowing more about their history, culture and traditions." The petitioner asserts that such participation by the American public is achieved by "invitations, phone calls and other marketing techniques," and that hotel guests come "solely to attend the daily cultural events, enjoy the manager's receptions and attend the book expo or fashion shows." The petitioner notes that it is difficult to prove that the American public visits any location solely for the purpose of cultural exchange, but asserts that any person staying at a participating hotel will spend most of their time in an international atmosphere. The petitioner emphasizes that events such as its September 2005 African Cultural Heritage Festival was attended by thousands of Americans who visited the festival solely to learn about African culture.

The petitioner emphasizes that it provided evidence of events that took place at locations other than hotel properties, and notes that "Q-1 regulations [do] not impose any ban on having shows in hotel banquet rooms as long as they are not conducted in the isolation of a private home." The petitioner asserts that since its "main market for cultural exchange is hotel guests, having these cultural shows in hotel banquet rooms make more sense."

In addition, the petitioner stresses that its program take place in businesses throughout the United States which offer accommodations that are open to the public, rather than in isolated businesses to which the public does not have access. The petitioner indicates that a substantial number of guests visiting its hotels prefer such hotels "because they get to interact with international participants and learn more about their culture." The petitioner also indicates that it advertises its international events in newspapers, and has a preferred guest mailing list, to

attract the public to stay in its affiliated hotels. The petitioner asserts that it makes a deliberate and intentional attempt to involve a segment of the American public with a common cultural interest in its events.

The petitioner also objects to the director's conclusion that the Q-1 program participants' cultural activities would be incidental to the proposed employment. Specifically, the petitioner states:

We strongly refute this allegation as main focus of our participants' employment is cultural exchange and that is the only value of her/his employment. For example, a Q-1 participants wearing her/his native costume standing behind a front desk having her/his area decorated with her/his Country's traditions would have only one thing in her/his mind to share her/his culture. Respectively, a participant working day and night to organize a festival and prepare him [sic] would have cultural exchange as his main focus and not any other parts of the employment. Not only is this but [sic] his whole performance evaluated on basis of quality of the cultural exchange. We would like to emphasize once again that a [company] Q participant is not concerned with hotels room revenue or number of room nights sold.

With respect to the work component of its international cultural exchange program, the petitioner further states:

We beg to state that our participants are not coming to the USA merely as workers to fill up jobs in the restaurants, kitchens and front desks of various hotels but are actually here as ambassadors of their countries to be able to interact with the common American. Workers coming with the objective of job [sic] would not come to US under our program where all their time is spent in cultural programs and events, where they have to complete various checklists, documents and formats on a daily basis for the sole purpose of cultural exchange, where the participants from different countries are planning different special activities like dinner nights, cultural nights, modeling nights etc. all the time, just to show all this to American public.

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination 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). Specifically, 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. Upon review, the AAO concludes that the amount of culture sharing among the participants and the public would be tangential and negligible.

To be eligible for designation as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act, the petitioner must establish that its proposed program satisfies the requirements at 8 C.F.R. § 214.2(q)(3) pertaining to the program's public accessibility, cultural component and work component.

(A) *Accessibility to the Public*

The petitioner emphasizes that its cultural exchange program takes place primarily in hotels and resorts "located near major highways and interstates that are easily accessible to the American public." However, the petitioner

has not established that the American public, or a segment of the public sharing a common cultural interest, would be exposed to aspects of a foreign culture as part of a structured program. The majority of the cultural activities undertaken by the program participants are realistically only available to paying guests of the petitioner's affiliated hotels, not by the general public or by a segment of the public sharing a common cultural interest. A review of the totality of the evidence reveals that the petitioner's program's cultural component is evident at special events sponsored by the petitioner on an intermittent, irregular basis, with some prior participants contributing to only one event attended by the public over a 15-month period in the United States.

Furthermore, although the petitioner indicates that the instant beneficiaries will be assigned to an affiliated hotel or hotels located "throughout California," all of the petitioner's events to date have taken place in Georgia, North Carolina or South Carolina. Notwithstanding the petitioner's claims that its only current Q-1 program participants are also assigned to properties located in California, the record is devoid of evidence of any type of cultural events that have been or will be held in that state. 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)).

A review of the "Daily Cultural Activity Checklist" submitted by the petitioner supports a conclusion that the participants' cultural activities are primarily confined to interactions with individuals or small groups of hotel guests who are primarily present in the hotel because they require temporary lodging for reasons totally unrelated to the petitioner's cultural programs. Such daily activities include wearing a nametag identifying the participant's nationality, decorating the work area with cultural artifacts, wearing native dress on designated days, maintaining a supply of recipes and maps specific to the worker's country of origin, playing CDs or tapes, keeping an "American guest log," and recording any cultural interactions with individual guests. The petitioner's claim that the affiliated hotels' guests "come solely to attend the daily cultural events" is wholly unsupported by evidence. There is no evidence that the affiliated hotels actually advertise or promote the petitioner's cultural programs in the hotels' marketing materials or web sites, and no basis to conclude that a person booking a room at one of the affiliated hotels would be aware of the existence of the petitioner's program. The petitioner has not adequately documented its own efforts to promote its hotel-based programs to the general public, and it has not been established that anyone other than hotel guests already lodging in the hotel would be aware of such activities.

The "End of Training Program Evaluation Forms" submitted also show that program participants are "responsible for sharing [his or her] culture with every guest, management and hotel staff." The petitioner submitted evidence of a "webinar" which is essentially a chat room created for program participants. There is no evidence that the program participants would share their culture 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 the United States to perform this type of exchange.

Overall, the record shows that the scope of any cultural activities undertaken by program participants only occasionally reaches beyond paying customers and staff of the hotels to which the participants are assigned. Accordingly, the petitioner has not established that its program meets the requirement set forth at 8 C.F.R. § 214.2(q)(3)(A), in general, or with respect to the instant beneficiaries. Furthermore, there is no evidence in the record regarding any planned, publicly accessible cultural activities related to the cultures of the instant

beneficiaries' native countries of Indonesia, Philippines, Argentina or Moldova, or any evidence of any previous or planned cultural activities undertaken by the petitioner's program participants in the State of California.

(B) *Work and Cultural Components*

The AAO concurs with the director that the primary purpose of the petitioner's international exchange program is to staff hotels with hospitality students and professionals, 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 participants share their own cultures with hotel guests and staff, and rarely, with the general public. However, the evidence indicates that the great majority of cultural exchange activity takes place outside of work hours and that the total time allocated to such activity would be insignificant in relation to the total amount of time participants spend at their work sites. 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 beneficiaries' employment would be to share their native cultures.

Similarly, the beneficiaries' work is largely independent of the cultural component of the international cultural exchange program. According to the petitioner's "GHE International Cultural Exchange Visitor Program Structured Training Program (GSTP)," the "participants work within various departments of these hotel properties to share their culture with hotel guests, gain work experience and hospitality skills."

Although the record indicates that the program participants are required to "share their culture" with hotel guests and staff, the petitioner has also indicated that they recruit hospitality students and professionals who are already experienced in the hotel industry, and assign them to traditional hospitality industry roles, such as front desk clerk. Therefore, while the program participants are designated as "cultural coordinators," the "End of Training Program Evaluations" completed for prior participants show that their duties included such tasks as checking customers in and out, taking reservations, performing night audits, supervising housekeeping staff, making sales calls and performing other duties to ensure customer satisfaction. The evidence in the record is insufficient to establish that the foreign program participants share their respective cultures with the public on a regular basis as an essential element of their responsibilities.

Rather, the evidence indicates that the cultural aspects of the participants' activities are tangential to their tasks as hotel employees responsible for the day-to-day operations of the front desk and other departments. The program participants also appear to have some choice as to what type of position they will undertake in the United States, not all of which would appear to even involve direct access to the hotel guests. For example, one of the beneficiaries seeks to be a housekeeping supervisor, some seek to work in the kitchen, and others seek to work as housekeepers. While the statute and regulations do not require the program to be purely cultural, the regulation specifies that the program's cultural component must be wholly designed to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the exchange visitors' country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). The evidence does not demonstrate that petitioner's cultural component is wholly designed

to exhibit or explain any of these aspects of Indonesian, Moldovan, Filipino or Argentine culture. Daily interactions with hotel guests such as wearing a country-specific nametag or native dress, handing out a recipe or brochure, decorating the hotel's front desk, or playing international music, are merely superficial cultural exchanges secondary to the employment.

Finally, certain aspects of the petitioner's claimed cultural program simply have not been documented. Although the petitioner claims to invite guests and speakers for presentations, book discussions, seminars, courses, and language classes, the petitioner has not submitted evidence that any of these more formal methods of cultural exchange have actually taken place at any of its properties. At most, it appears that the participants might engage in one public off-site cultural event and a few informal on-site events, such as holiday celebrations or international food nights, for hotel guests during the course of a 15-month program.

In addition, the AAO notes that the petitioner provided a copy of its very detailed profit and loss report for the period between January 1, 2005 and March 2, 2006. During this time, the company reported a \$1,086.60 expense for "cultural shows" as an "Internship Expense," and "other income" of \$2,000 for cultural activities. The same report shows that the company spent \$3,292.31 on "monthly cultural nights," in 2004. These expenses are insignificant for a company with over \$1.7 million in revenue during the same period. The profit and loss report raises further questions about the nature and extent of the petitioner's cultural activities and whether it is truly a "cultural exchange management" company as opposed to an employee placement company serving the hospitality industry. It is noted that at least two of the eight beneficiaries were in the United States as H-2B temporary workers at the time the instant petition was filed, presumably as temporary hotel employees, as their visas were sponsored by the petitioner. The petitioner's claim that it is solely dedicated to operating a cultural exchange program is not supported by the record.

Based on the foregoing discussion, 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 aliens' countries of nationality. Accordingly, the appeal will be dismissed.

II. The Petitioner as Qualifying Employer

The second issue addressed by the director is whether the petitioner is a qualified employer for purposes of this visa classification.

The regulation at 8 C.F.R. § 214.2(q)(1)(ii) defines a "qualified employer" as follows:

. . . 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 designated by the Attorney General in accordance with the provisions of section 101(a)(15)(Q)(i) of the Act.

The regulation at 8 C.F.R. § 214.2(q)(4) outlines the evidence to be submitted by the petitioning employer:

- (A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;
- (B) Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with USCIS;
- (C) Is actively doing business in the United States;
- (D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and
- (E) Has the financial ability to remunerate the participants(s).

As noted above, the petitioner indicated on Form I-129 that the eight beneficiaries will work at [REDACTED] in Norcross, Georgia. In its letter dated August 8, 2006, the petitioner indicated that the cultural exchange program will take place "at several hotels and resorts throughout California." The petitioner did not identify the partner hotels or resorts at which the beneficiaries would be employed.

In support of the petition, the petitioner provided signed confirmations from previous program participants who stated the following:

I . . . certify that [the petitioner] is my sole employer throughout the duration of my Q program. [The petitioner] monitors and control[s] my cultural exchange schedule, rotation and evaluate my performance. [The petitioner] is also providing me with my semi-monthly paycheck, housing and applicable transportation.

According to the petitioner's Structured Training Plan, the participants spend their first week in the United States at the petitioner's Norcross, Georgia headquarters, before being taken to their assigned hotel property. The petitioner indicates that the participants spend parts of months 3, 5, 6, 10, 13, 14 and 15 at the company's headquarters, where they will meet with their supervisors or managers.

According to the petitioner's daily cultural activity checklist, each participant's daily activities are to be reviewed by both the property manager and by the petitioner's manager.

In the request for evidence issued on August 17, 2006, the director requested quarterly wage reports submitted to the Georgia Department of Labor, accompanied by Form I-797 Approval Notices for each cultural exchange beneficiary, for the last two quarters of 2005. The director also requested evidence such as floor plans, evidence of insurance, and occupancy permits evidencing that the petitioner is doing business and has the facilities to conduct the claimed cultural activities.

In response, the petitioner provided a list of person who participated in its Q-1 program in 2003 and 2004, along with copies of stipend checks issued to them by the petitioner. The petitioner submitted copies of its Georgia Employer's Quarterly Wage and Tax Report for the third and fourth quarters of 2005 and first two quarters of 2006. During this time, the petitioner reported between 19 and 63 employees working in Georgia. The petitioner had 20 employees in Georgia as of June 2006. The petitioner provided a list of six current Q-1 program participants, all of whom arrived in the United States between April and August 2006. The petitioner also provided a copy of its California quarterly wage report for the second quarter of 2006, evidencing wages paid to four Q-1 beneficiaries and one other employee during the months of April, May and June 2006.

In addition submitted a copy of its office lease for its Norcross, Georgia location, a copy of a lease for an apartment located in Hilton Head Island, South Carolina, and a copy of a lease for 400 square foot premises located in a shopping mall in Norcross, Georgia.

In denying the petition, the director observed that the petitioner, which claims to have 100 employees, documented only six employees working in California, which is where the current beneficiaries would be assigned. The director stated:

USCIS must question, who is the employer of the petitioned Q-1 beneficiary's [sic] in the State of California? The petitioner did not provide the name or location of the participating hotel in California. The print out of wages paid in the State of California alone without an actual agreement between the participating hotels is insufficient to determine who the actual employer of the beneficiaries is. Therefore, USCIS must question who is monitoring daily cultural activities . . . ? Who conducts [liaison] between the California community and the cultural exchange beneficiaries to obtain dates and venues for cultural events?

On appeal, the petitioner clarifies that while it has "over 100 employees," and notes that the six employees listed on the 2006 California quarterly report are currently the only Q-1 cultural exchange participants sponsored by the petitioner. The petitioner further states:

[The petitioner] is the employer of the petitioned Q-1 beneficiaries and they are conducting Q-1 cultural exchange program under the guidelines and constant supervision of GHE Cultural Exchange Specialist. GHE Cultural Exchange Specialist [REDACTED] and [REDACTED] are in charge of conducting the cultural exchange and signing off on the daily cultural checklists.

The petitioner also clarifies that the beneficiaries will be assigned to the Ramada Inn – Downtown San Francisco hotel, and submits a copy of its "Affiliate Cultural Partner (Property) Agreement" with this hotel, dated February 23, 2005. The petitioner further states:

[The petitioner] keeps total control on scheduling, monitoring and performance evaluations of all cultural exchange participants and monitors their activities everyday. It is this aspect of control that truly demonstrates that [the petitioner] is the Employer.

Pursuant to the terms of the agreement, the program participants "shall not be employees of the Affiliate Cultural Partner" and "shall not be entitled to participate in any of the Affiliate Cultural Partner's employee benefit plans." The petitioner agrees to ensure that all participants "receive instruction on the proper use of all equipment, supplies and chemicals by Affiliate Cultural Partner," and "follow the policies and procedures set forth by Affiliate Cultural Partner."

Under the agreement, the ACP property agrees: to place participants in positions that are accessible to the public and to allow them to "expose, exhibit, explain and/or present" their foreign culture to the American public as a result of, through, and in the course of their employment"; to provide the petitioner with "periodic written evaluations of the Participant's performance"; to schedule the participants for a maximum of 40 hours per week; and to schedule the participant to share his or her culture in coordination with the petitioner's transportation system.

In addition, the ACP property "agrees to pay [the petitioner] \$1,675.00 per month for each entry level participant as a participation fee" and such payment "is to provide for daily, weekly and monthly cultural activities performed . . . under close supervision of [the petitioner's] managers." According to the agreement, the ACP is responsible for half of the total one-time cost of transporting each participant to the hotel property.

Upon review, the petitioner has not submitted sufficient evidence to satisfy the requirements of 8 C.F.R. § 214.2(q)(4). The petitioner has established that it is an active corporation that is doing business, and that it has the financial ability to compensate the beneficiaries. However, as noted by the director, it has not been established, based on the evidence of record, to what extent the petitioner will actually administer the California-based cultural exchange program.

The petitioner has overcome one of the director's objections on appeal by identifying the name and location of the beneficiaries' proposed worksite, and providing a copy of its agreement with the hotel to which they will be assigned. However, the petitioner has still not clearly responded the director's direct inquiry as to who will directly monitor the beneficiaries' daily cultural activities. The petitioner concedes that almost all of its employees, as of the date of filing, were working in Georgia, while five to six Q-1 beneficiaries were working in California. The petitioner allegedly requires one of its own managers to sign off on each beneficiary's daily cultural activities checklist on a daily basis, which would reasonably require the physical presence of one of the petitioner's employees at the property to supervise the beneficiaries' work and any cultural programs that take place at the hotel. The petitioner claims that it has two cultural exchange specialists who "are in charge of conducting the cultural exchange and signing off on the daily cultural checklists," however, both of these employees are on the petitioner's Georgia payroll. It is reasonable to conclude that these employees work and reside in Georgia. Thus, it is not clear how the petitioner "keeps total control on scheduling, monitoring and performance evaluations" for participates or how it "monitors their activities everyday."

The AAO is not persuaded that the petitioner will have anyone located at the hotel's premises to oversee the activities or otherwise administer the cultural exchange program on a day-to-day basis. The petitioner has not offered an explanation as to how it supervises Q-1 participants who are located 3,000 miles away from its program supervisors. Furthermore, the petitioner's training plan proposes that program participants will return to the petitioner's headquarters in Georgia a total of seven times during their 15 month program in order to

meet with the petitioner's management, while the petitioner's agreement with the hotel suggests that the participants will have make a one-time trip to the hotel property and remain there for the duration of the program. There is no indication in the agreement that the participants are to be excused from their positions for multiple cross-country trips from California to Georgia, which raises questions as to how much contact the beneficiaries will actually have with the petitioner's staff after their first week in the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is reasonable to conclude that the beneficiaries' daily cultural and employment activities would be primarily supervised by the hotel staff, and not by the petitioner's management. The petitioner has not satisfied the requirement set forth at 8 C.F.R. § 214.2(q)(4)(B).

Beyond the decision of the director, the AAO finds that the petitioner failed to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed, as required by 8 C.F.R. §214.2(q)(4)(D).

The petitioner indicates that it intends to pay the beneficiaries as follows: a \$600 monthly stipend; fully furnished housing valued at \$550; and utilities, cable, phone, transportation, and housekeeping services valued at \$275 per month, for a total compensation package valued at \$1,375. The petitioner states the minimum wage in San Francisco, California is \$8.50 per hour or \$1,360 per month. The AAO notes that the annual wage for an employee working 40 hours per week at a wage of \$8.50 would be \$17,680, or a monthly wage of \$1,473. The total compensation offered is actually less than minimum wage and therefore cannot be considered comparable to local domestic workers. Furthermore, the petitioner has not submitted evidence that minimum wage is standard pay for the hospitality positions offered. Some of the participants in the petitioner's program, based on the evidence submitted, are actually experienced hospitality workers who would not necessarily be expected to work at the entry-level wage for the industry, much less at minimum wage.

Furthermore, the petitioner did not submit any evidence to establish that it has secured housing near the proposed place of employment at the stated monthly value of \$550. The petitioners submitted evidence that it leases an apartment in Hilton Head, South Carolina which can house three people for \$875 per month. The petitioner did not submit a lease agreement or lease agreements for any residential housing in California, therefore this portion of its claimed compensation package cannot be verified. 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. at 165. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petitioner noted that USCIS has approved other petitions that the petitioner had previously filed on behalf of other employees. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals 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). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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 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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.