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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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Services

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FILE: EAC 08 054 51182 Office: VERMONT SERVICE CENTER Date: JUN 23 2009

IN RE: Petitioner: [REDACTED]
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:

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, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a full-service resort located in Orlando, Florida. It seeks to employ the beneficiary temporarily in the United States as a cultural representative for a period of seventeen (17) months.¹ 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).

Referring to the eligibility criteria at 8 C.F.R. § 214.2(q)(3)(iii), the director reviewed the evidence and concluded that the petitioner had not established that the international cultural exchange program has a structured cultural component or that the beneficiary would be employed primarily to share with the American public the culture of her country of nationality. In denying the petition, the director emphasized that the petitioner failed to submit persuasive corroborating documentation in support of its claims that it operates a structured cultural exchange program, and failed to adequately address the work component of its program, and therefore did not meet the cultural and work component requirements set forth in the regulations.

On appeal, counsel for the petitioner asserts that the director erred in dismissing the petitioner's descriptions of its cultural exchange program as "self-serving." Counsel asserts that the petitioner has clearly demonstrated that its program is accessible to the public, and has the requisite work and cultural components required by 8 C.F.R. § 214.2(q)(3)(iii).

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

¹ The period of admission for a Q-1 nonimmigrant is the duration of the cultural exchange program or fifteen (15) months, whichever is shorter. 8 C.F.R. § 214.2(q)(2)(i).

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 regulation at 8 C.F.R. § 214.2(l)(4)(i)(A) requires the petitioner to submit appropriate documentation to evidence that the employer maintains an established international cultural exchange program in accordance with the requirements set forth above.

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 director concluded that the petitioner's program does not

meet the regulatory requirements pertaining to the cultural or work components. The director denied the petition, in part, based on the petitioner's failure to submit corroborating evidence in support of its statements that it operates a qualifying international cultural exchange program.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 14, 2007, accompanied by the following supporting documentation:

- A six-page document describing the petitioner's international cultural exchange program.
- A copy of the beneficiary's completed international exchange program application.
- Copies of three promotional brochures for the petitioner's parent company and the petitioner's resort.
- A list of the petitioner's employees by department, which included the nationality of each employee.
- A copy of the United States passport for the petitioner's designated Q-1 program director.
- Copies of the petitioner's tax returns for 2004, 2005 and 2006.
- Evidence of the beneficiary's J-1 nonimmigrant status.
- Copies of the beneficiary's Jamaican passport, birth certificate and U.S. Social Security Card.

The petitioner's international cultural exchange program description includes the following mission statement and program description:

Mission Statement

To further international understanding and promote cultural awareness through a wide range of work, travel, language, volunteer, professional training and internship within the United States and around the world. We take great pride in the professionalism and service of our program and work hard to ensure our program provide[s] a rewarding experience for all participants.

Program Description

The International Cultural Exchange Program offer[s] professional, cultural and educational exchange opportunities to international students and young professionals. The program combines practical and theoretical information about the social and cultural environment of the host country beside Cross-cultural exchange the participants who come from many different countries. The program fields are varied with a focus on business administration and management, computer science, hospitality and tourism.

The components of the program are *Orientation*, *Experience in a multicultural group*, *agency placement*, and *evaluation*. The *orientation* of the program is aimed at providing a framework to understand the social, economic and cultural trends prevalent in the country with a historical perspective, tolerance and understanding. *Experience in a multicultural group*:

Every participant presents work methods and intervention strategies, as well as the socioeconomic situation and cultural trends of her/his own country. This facilitates cultural exchange, cross-cultural training, and sharing of ideas and skills. *Agency Placement:* Participants are placed to train in agencies related to their own specialized field, to observe and experience professional social work in the host country. *Evaluation:* Evaluation offers participants an opportunity to clarify new gained impressions, knowledge and experience, in order to assess the effectiveness of the program.

The program also focuses on creating affordable cultural exchange opportunities.

(Emphasis in original.)

The remainder of the information contained in the training program description includes descriptions of theme parks and other entertainment venues and recreational opportunities located in Orlando, Florida. The program description emphasizes that Orlando is a destination for tourists and immigrants from all over the world and notes the diversity of the city's culture.

The beneficiary's application for the petitioner's international exchange program indicates that the beneficiary was appointed to the position of front desk supervisor/manager at the petitioner's resort in April 2007, where she is responsible "to provide guests with the best customer service skills whilst promoting cultural diversity." The beneficiary indicates that her main responsibilities in this position are: (1) to ensure that staff adheres to the goals and working standards of the resort; (2) to timely address or find solutions to problems that arise in a very professional manner; (3) to be attentive to staff's wellbeing and performance; and (4) to conduct training exercises for new employees. The beneficiary indicated on the application that her "primary cultural interest," is "folk heritage," and that the "type(s) of opportunities made possible by this project" include cultural exchange, professional development and information exchange.

The director issued a request for additional evidence (RFE) on February 19, 2008, in which the director stated, in part:

It appears the basis for the Q-1 request is based upon the location of your resort in relation to the cultural diversity which exists in Orlando and the outlying areas surrounding Orlando. However the record does not provide persuasive evidence demonstrating your resort/organization has a viable cultural exchange program.

The director therefore requested that the petitioner submit evidence that it maintains an international cultural exchange program that satisfies all program requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), including public accessibility, cultural and work components. The director emphasized that the petitioner is required to document its program through the submission of evidence, pursuant to 8 C.F.R. § 214.2(q)(4)(i)(A).

The director also acknowledged the employee list submitted at the time of filing, and requested that the petitioner identify any employees who have been granted Q-1 classification, along with copies of their Form I-797 Approval Notices and Forms I-94, Arrival-Departure records.

The petitioner's response to the RFE consisted of a letter dated April 2, 2008. The petitioner stated that its international cultural exchange program "complies with all of the requirements set forth by the federal government, including the Department of State and U.S. Citizenship & Immigration Services."

The petitioner emphasized that the beneficiary is "well-versed in Jamaican art, history, music and native culture," and "will be able to lead [its] cultural exhibitions that are on Caribbean culture." The petitioner noted that its resort attracts guests from all over the world and that its attractions include "cultural diversity and expressions" such as "art, food, music and culture from the Caribbean." The petitioner acknowledged that the beneficiary originally joined the resort's staff to learn hotel administration and management, but now seeks to join the cultural exchange program.

The petitioner briefly addressed each program requirement pursuant to 8 C.F.R. § 214.2(q)(3)(iii), noting that its resort is "open to all members of the American public and to visitors from around the world," and is not a private or members-only resort. The petitioner indicated that it strives "to provide each family with cultural enhancement and awareness," and holds "periodic cultural activities and displays from Italy, France, Mexico, the Caribbean (including Jamaica), and Latin America."

With respect to the cultural component of the proposed Q-1 program, the petitioner stated:

A major component of [the beneficiary's] proposed position in the cultural exchange program is designing and directing the Caribbean activities at the resort. [The beneficiary] will be able to coordinate the art, clothing and dancing typical in Jamaica.

The petitioner addressed its proposed program's work component as follows:

[The beneficiary's] proposed job duties if granted the Q-1 would be inextricably intertwined with her sharing of the Jamaican culture with patrons of the resort. We believe that [the beneficiary] has competent administrative skills, and coupled with her comprehensive knowledge of the Jamaican culture, she is an excellent candidate for the program. She will be responsible for coordination, administration and oversight of the Caribbean exhibition at the resort. [The petitioner] would not have considered [the beneficiary] for this temporary position if not for her knowledge and enthusiasm about Jamaican culture. We hope that upon return to Jamaica after completing the cultural exchange program, she can assist us in selecting other equally qualified Jamaican nationals to carry on with the Caribbean exhibition.

Finally, in response to the director's request for evidence relating to any other Q-1 beneficiaries sponsored by the petitioning organization, the petitioner stated that "many of our current employees are from various parts of the world." The petitioner indicated that two employees currently hold Q-1 status, one from Bolivia and one from the Philippines. The petitioner did not identify the employees by name or provide documentary evidence of their Q-1 status.

The director denied the petition on May 8, 2008, concluding that the petitioner failed to establish that it has developed an international cultural exchange program that meets the requirements of 8 C.F.R. 214.2(q)(3)(iii). Specifically, the director determined that the petitioner did not establish that it operates a "structured program" of cultural exchange that includes a cultural component that is essential and integral to the alien's employment, or that the work to be performed would be independent of the cultural component of the exchange program.

The director emphasized that the RFE clearly stated that the petitioner must submit persuasive corroborating evidence demonstrating that the organization operates an established international cultural exchange program. The director noted that the record does not indicate how the beneficiary will accomplish the claimed cultural activities, nor does it adequately address the work component required by regulation. Specifically, the director observed that the petitioner did not establish the amount of time the beneficiary would spend accomplishing her duties and responsibilities or the percentage of time she would be involved with cultural activities relating to the work component.

Finally, the director found the petitioner's letter in response to the RFE to be "self-serving" because it was not accompanied by additional corroborating evidence. The director noted that the limited supporting evidence in the record, specifically the petitioner's brochures, do not indicate the existence of a cultural exchange program or the frequency of any scheduled cultural activities likely to be encountered during a customer's stay at the petitioner's resort.

On appeal, counsel for the petitioner asserts that the petitioner does maintain an international cultural exchange program that satisfies all of the requirements of 8 C.F.R. § 214.2(q)(3)(iii). Counsel contends that the petitioner's statements should not be considered "self-serving" or insufficient evidence. Counsel states:

[The petitioner] holds organized events in which the visitors can participate, that include meals indigenous to the culture highlighted on that day, as well as art exhibits, music, traditional dances and other unique matters. [The petitioner] intends for [the beneficiary] to lead the exhibition on Jamaican and Caribbean culture because of her comprehensive knowledge in those areas.

As for the second prong of the test, [the petitioner] submitted a summary statement of the program's structure. [The beneficiary] holds daily exhibitions and events, for its customers, centered around culture from various parts of the world. . . . [The beneficiary's] employment is designed to serve the cultural objectives of the program.

* * *

As for the third prong of the test, [the beneficiary's] proposed employment with [the petitioner] is not independent of the cultural component of the program. As stated in the evidence produced to USCIS, the objectives of [the beneficiary's] employment are to expose members of the American public to Jamaican culture.

Counsel reiterates that the petitioner's supporting letter should be considering corroborating rather than "self-serving" evidence." Counsel asserts that it is a "viable position to claim that the evidence was insufficient, however, but very different to say that the evidence was non-existent because it came in the form of a supporting letter from the employer."

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.

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.

Accessibility to the Public

The petitioner emphasizes that its cultural exchange program takes place in a resort that is open 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. Based on the extremely brief program description in the record, it appears that exposure to the petitioner's claimed cultural activities would be limited to paying resort guests, rather than available to the general public or by a segment of the public sharing a common cultural interest.

Although the petitioner states that one of its attractions is "cultural diversity and expressions" and "art, food, music and culture from the Caribbean," it has provided no documentary evidence to corroborate its claim that the petitioner's cultural programs are actually promoted to the public, or that the resort is actually "known for the various cultural activities" it arranges. The promotional brochures provided include no mention of a cultural program or cultural activities at the resort. Contrary to counsel's claims on appeal, the regulations do in fact require more than a brief statement from the petitioner to establish the existence of a structured cultural exchange program. 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)).

Overall, there is no basis for the AAO to conclude that the scope of any cultural activities undertaken by program participants would reach beyond paying customers of the petitioner's resort. Furthermore, the customers of the petitioner's resort have not been shown to be "a segment of the American public sharing a common cultural interest," as opposed to travelers seeking lodging in the Orlando, Florida area.. 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 beneficiary.

Work and Cultural Components

The AAO concurs with the director that the petitioner has failed to establish that the primary purpose of the beneficiary's employment would be to operate 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).

At the time of filing, the petitioner provided no description whatsoever of what duties the beneficiary would perform as a "cultural representative" for the petitioner's resort. The record shows that, at the time of filing, the beneficiary had already been serving as a front desk supervisor at the petitioner's resort for eight months, performing duties typical of that occupation. Given that this petition was filed just days before the beneficiary's J-1 status was due to expire, it is reasonable to question whether she would simply continue to perform the same duties in Q-1 status.

Furthermore, the petitioner's explanation of its cultural exchange program was extremely vague and limited to a one-paragraph "mission statement" and a two-paragraph "program description." Given that the petitioner operates a resort, the AAO questions why it claims in its mission statement to offer "computer science" as one of the program fields included in its cultural exchange program. A review of the petitioner's employee list reveals that the organization does not have an information technology department.

In addition, the four program components outlined in the "program description" – specifically, "orientation," "multicultural group," "agency placement" and "evaluation"- were also not adequately explained. For example, it is unclear why the petitioner states that its Q-1 program participants "are placed to train in agencies related to their own specialized field, to observe and experience professional social work." If the purpose of the beneficiary's employment as a cultural representative is to coordinate a Caribbean cultural program at the petitioner's resort, then why would she be assigned to an external "agency" to observe "professional social work"? 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).

Based on the initial evidence, the director reasonably requested documentation establishing that the petitioner maintains an established international cultural exchange program in compliance with the regulatory requirements. Furthermore, since the petitioner did not claim that the program was newly established, it was reasonable for the director to request evidence of Q-1 status granted to current employees of the petitioning organization.

The AAO concurs with the director's determination that the short statement from the petitioner submitted in response was wholly inadequate to establish the petitioner's eligibility. The petitioner stated that the beneficiary will be "designing and directing the Caribbean activities at the resort," will "coordinate the art, clothing and dancing typical in Jamaica," will be responsible for "coordination, administration and oversight of the Caribbean exhibition," and will "lead our cultural exhibitions that are on Caribbean culture." This is the extent of the beneficiary's position description and fails to identify the specific tasks she will perform and the amount of time she will devote to performing the claimed cultural duties. The record also contains no

descriptions of what will be included in the "Caribbean exhibition," or in what manner and with what frequency the "art, clothing and dancing" would be made available to the public. Again, 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 at 165.

Furthermore, although the petitioner claims that it is already operating a Q-1 cultural exchange program, it failed to identify the names of the aliens participating in the program, provide copies of their approval notices from USCIS, or provide documentary evidence of the "cultural displays" for which it claims its resort is well known. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Notwithstanding the petitioner's claims that it employs two Q-1 beneficiaries, USCIS records indicate that the instant petition is the first Q-1 classification filed by the petitioner. While the petitioner claims to employ one Q-1 beneficiary from the Philippines and one from Bolivia, the AAO notes that the petitioner's employee list includes no employees identified as "cultural representatives," and no employees from these two countries. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The petitioner's entire case is based on unsupported assertions, some of which are of questionable credibility. The regulations clearly establish that the petitioner must submit documentary evidence to corroborate its explanations and descriptions of its cultural exchange program. *See* 8 C.F.R. § 214.2(q)(4)(i)(A). Absent objective, documentary evidence that the petitioner actually operates a structured cultural program that is accessible to the American public, and a description of the beneficiary's actual proposed duties beyond generalities, the petitioner has failed to establish that it meets any of the program requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). It is insufficient for the petitioner and counsel to repeatedly assert that its program meets all USCIS requirements without actually documenting the existence and nature of the program.

On appeal, counsel acknowledges that "it is a viable position to claim that the evidence was insufficient," yet the petitioner fails to submit any additional evidence on appeal beyond counsel's unsupported assertions that the petitioner's program satisfies the regulatory requirements for Q-1 classification. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the foregoing discussion, the petitioner has not established that its international cultural exchange program meets the regulatory requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), nor has it met the evidentiary requirement set forth at 8 C.F.R. § 214.2(q)(4)(i)(A). Accordingly, the appeal will be dismissed. 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.

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ORDER: The appeal is dismissed.