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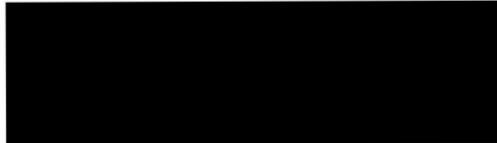
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FILE: WAC 08 255 50111 Office: CALIFORNIA SERVICE CENTER

Date:

NOV 25 2009

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).

Perry Rhew
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 appeal will be dismissed.

The petitioner operates a full-service hotel located in Washington, D.C. 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). It seeks to employ the beneficiaries as food and beverage attendants for a period of fifteen months.

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 it has an established international cultural exchange program with a structured cultural component or that the beneficiaries would be employed primarily to share with the American public the culture of their country of nationality. The director observed that the primary reason for the beneficiaries visit to the United States would be employment in various entry-level hotel positions.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that "our purpose in designing this program is to create the opportunity for our American visitors to have the chance to meet with and learn about other cultures while they visit the nation's capital." The petitioner states that, "in order to be in compliance with the requirements of the Q program, we have designed the program in the way that the work component will not be independent of the cultural component." The petitioner submits a "revised Q program" 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 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 director concluded that the petitioner's program does not meet the regulatory requirements at 8 C.F.R. § 214.2(q)(3)(iii) 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 October 24, 2008, accompanied by the following supporting documentation:

- A five-page document, "Q-1 Cultural Exchange Program Draft," describing the cultural and work components of the petitioner's Q-1 cultural exchange program.
- Offer letters for both beneficiaries identifying the terms of their proposed employment.
- Copies of the beneficiaries' resumes, educational credentials, letters from prior employers, passports, and evidence of their current J-1 nonimmigrant status.
- Application letters from the beneficiaries expressing their interest in the petitioner's Q-1 program.

The petitioner's international cultural exchange program description includes the following overview:

[The petitioner] has developed a structured program where international hoteliers will be welcomed who will be acting as cultural ambassadors of their countries they represent. The program is structured to give them the chance to represent their country's heritage and traditions. This will be accomplished through several activities designed with the program period /duration of their stay. This program will include presentations, decorations, food, music, costumes, history and customs unique to their country.

These cultural activities will allow the participants to share their culture with our associates as well as in different occasions with our guests and community in an environment that encourages acceptance and respect fro [sic] all races and nationalities. We hope and believe that these activities will break down cultural barriers and begin to see cultural similarities rather than differences.

The petitioner further described its "Cultural Activities Plan" as follows:

- Participants required bringing traditional costumes, flags, maps, pictures and brochures to assist in the implementation of the program.
- The cultural activities allowing the cultural program participants to interact with younger guests and their families
- Program will target hotel guests and their children giving them the opportunity to learn more about other countries and cultures. We believe that this will broaden their vision, create curiosity about other cultures, be open minded about different cultures and traditions and inspire them to research more about these other cultures and become culturally aware.

Finally, the petitioner described the "General Components of the Cultural Activities" as the following:

- **Global Lunch Buffet:** Every day of the week the lunch buffet is prepared based on different countries cuisine where traditional dishes are presented to local and hotel guests.
- **Surprise and Delight Program:** Every holiday is a cause to celebrate. In preparation for festivities, we've created a plan to Surprise and Delight our guests with thoughtful touches and original ideas to fill the calendar year. Consider a Valentine's Day Sweepstakes to win a trip to Paris, France.
- **Country Flag Nametags:** All participants of the program will be wearing a nametag that identifies them as Cultural Representative of their country and displays their country flag.
- **Cultural Costumes:** Participants will wear items of traditional, cultural dress during segments of their practical training. This will visually share traditions of their home country and will open lines of communication during guest interaction.
- **Welcome to My Country Board/Presentation:** Participants will be assigned to a special area where they will be able to present interesting facts on their country such as posters/pictures of important sites, traditional clothes, authentic food, natural resources etc. These designated areas will i.e. Lobby area, pavilion at Race Track, pool side.
- **Cultural Drink of the Day:** Participants will showcase to guests traditional beverage of their homeland at the poolside.
- **Cultural Amenities:** Special amenities such as coloring pages, placements, napkins including participants country flags/colors cultural trivia or games that will make the meal interesting and learning experience for the children. We believe that adults interested in different cultures will be interested to have these amenities and learn too.
- **International Food Day:** Participants will be sharing the richness of their culture in the culinary area as well. Participants will contribute with a recipe to prepare for guests as well as for associates on associates special activities/functions.
- **International Cuisine Classes:** Participants will allow demonstrating cooking styles and traditional dishes with guests or co-workers.
- **International Music & Dance:** Guests will learn the traditions and meanings of songs and the rhythms of the cultural program participants through listening the international songs that will be played and traditional dances performed on special occasions like international karaoke night events.
- **International Movie Night:** Participants will be allowed to organize movie night events for guests or co-workers where they will be able to play movies or documentaries showing highlights of their country and culture

The petitioner stated that the cultural program "will also involve components of practical training," allowing the beneficiaries "to practice their technical knowledge and improve their skills in the field of service industry." Specifically, the petitioner stated that the beneficiaries will "experience" the following departments and positions during the 15-month period: (1) Guest Services; (2) Human Resources/Employee Training; (3) Financials; Cash Handling and Point of Sale; (4) Front Office/Rooms Division; (5) Food and Beverage Division; (6) Culinary Operations; (7) Events Planning; and (8) Hospitality Business and Finance Operations. The petitioner indicated that the beneficiaries will improve their guest service skills and understand the daily procedures and operations in each department.

The director issued a request for additional evidence on October 1, 2008. The director instructed the petitioner to 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 further requested: (1) a more detailed description of the work or services to be performed by the beneficiaries, including specific job duties, the percentage of time spent on each duty and the level of responsibility; and (2) a description of the type of training to be received by the beneficiaries.

In response, the petitioner submitted a 12-page document titled "Q-1 Cultural Exchange Program Components." The document incorporates much of the content of the shorter program description submitted at the time of filing, and provides more information regarding the specific duties to be performed in each training/employment area. The revised program description indicates that the "cultural components of the cultural activities," including the global lunch buffet, country flag nametags, cultural costumes, etc., "will be held throughout the 12 months program period."

The revised program indicated that the beneficiaries will be "employed and trained" in the rooms division/front office/guest services, food and beverage division, and cash handling/point of sale departments over a 12-month period, rotating every four months. The program description indicates that "the primary purpose of the training is to enhance the cultural exchange visitor(s)'s skills in the area of interests." The program description goes on to describe in detail the tasks the beneficiaries would perform, noting that they would spend four months in the banquets department, four months in restaurant operations, and four months in bar operations. The AAO notes that the duties include tasks that are typical for hotel/restaurant staff, such setting up banquets; taking food and beverage orders for the restaurant and room service; serving food and drinks; clearing tables; and cashier duties.

The program description indicates that "the hotel will give the cultural exchange visitor sample [*sic*] opportunity to participate and attend varios [*sic*] events, projects and company or community initiatives." Possible "seminars/projects/initiatives" include culinary seminars and "varios [*sic*] charity events throughout the community."

The director denied the petition on November 10, 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 determined that any cultural events and activities would be incidental to the beneficiary's actual duties and responsibilities at the hotel, and the primary purpose for their visit to the country is employment.

On appeal, the petitioner provides the following statement on Form I-290B, Notice of Appeal or Motion:

[The petitioner] is located in the heart of the city, welcoming Americans visiting the nation[']s capital from different states. Attached you will see the occupancy rate of the hotel throughout the year as well as list of events organized by local community showing that [the

petitioner's hotel] is a site where Americans can be exposed to foreign culture. Our purpose in designing this program is to create the opportunity for our American visitors to have the chance to meet with and learn about other cultures while they visit the nation[']s capital. In order to be in compliance with the requirements of the Q program, we have designed the program in the way the work component will not be independent from the cultural component. Attached you will also find the revised Q program for your review and approval where we have explained the importance of the participants['] role in achieving the primary goal of the program which is exposing Americans to foreign cultures.

In support of the appeal, the petitioner submits a revised "Q-1 Cultural Exchange Program Cultural Components Implementation & Training Syllabus." The petitioner indicated that during the first four months of the program, while completing the "banquet" rotation of their employment/training program, the beneficiaries will implement the cultural components of the program at "local community functions/banquet events" scheduled to take place at the hotel. The events are being held by the American Historical Association, the American Council on Renewable Energy, the Newspaper Association of America, Transportation research Boards, Credit Union National Association and Astra Tech. The petitioner provides a list of groups with events scheduled to take place at the hotel during the remaining two phases of the employment/training program. Additional groups include the American Psychiatric Association, the National Education Association, the American Association of Diabetes Educators, GE Healthcare, AARP, National Black MBA Association, American Society for Microbiology, Cardiovascular Research Foundation, Society for Neuroscience and the Association of the US Army. The description does not describe in any detail how the cultural components of the program would be incorporated into these private events. Throughout the program, the beneficiaries would be responsible for the duties normally performed by the hotel's banquet, restaurant and bar staff.

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 hotel 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 brief program description in the record, it appears that exposure to any claimed cultural activities or components would be limited to hotel guests, rather than available to the general public or by a segment of the

public sharing a common cultural interest. 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.

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 hotel. While the petitioner indicated that it intends to provide opportunities for the beneficiaries to share their culture in outside events such as local charity events and seminars, there is no evidence that the petitioner sponsors such activities. Furthermore, the customers of the petitioner's hotel 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 Washington, D.C. area. Accordingly, the petitioner has not established that its program meets the requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A), in general, or with respect to the instant beneficiaries.

Work and Cultural Components

As a preliminary matter, the AAO acknowledges the "revised" Q-1 program description submitted on appeal. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO need not consider the revised program. Regardless, the AAO notes that the new program description actually contains even fewer proposed cultural activities than the original program, and, like previous program descriptions, fails to establish that the program has a cultural component which would be an essential and integral part of the beneficiaries' employment or training.

The AAO concurs with the director that the petitioner has failed to establish that the primary purpose of the beneficiaries' employment would be to operate a structured 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). Here, the amount of cultural sharing among the participants and the public would be tangential to the aliens' employment.

Furthermore, the AAO concurs with the director's determination that the duties to be performed in the position of "Food and Beverage Attendant" are independent of the petitioner's proposed 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. 8 C.F.R. § 214.2(q)(3)(ii)(B). The work component must serve as the vehicle to achieve the objectives of the cultural component. 8 C.F.R. § 214.2(q)(3)(ii)(C). 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 agents and food and beverage workers. Here, the two beneficiaries have already been working at the

petitioner's hotel as J-1 exchange visitors and have likely completed the proposed training that comprises the "work component" of the program.

The AAO is not persuaded that such elements as wearing a name tag identifying a person's country of origin, wearing a cultural "costume," displaying a poster, handing out flyers or other "cultural amenities," or organizing an occasional international movie night will result in any meaningful exhibition or explanation of the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitors' home countries. Such interactions must be deemed secondary to the beneficiary's employment as hotel workers. The petitioner has not established that the daily cultural interactions of the participants would be part of a structured program truly designed to share the history, culture, and traditions of the country of the alien's nationality.

Finally, certain aspects of the petitioner's claimed cultural program simply have not been documented. Although the petitioner claims that the beneficiaries will implement cultural activities at hotel events, it has not submitted evidence that any of these more formal means of cultural exchange have previously taken place at its property, or that any events have been formally planned. Rather, the petitioner simply submits a list of groups that have booked conferences, meetings or blocks of rooms at the hotel. The petitioner has not submitted credible evidence that the claimed cultural presentations will be held or that the groups booked at the hotel, which include government agencies, associations and private companies, would welcome or have agreed to the proposed cultural activities in the midst of their conventions and meetings. These are clearly not cultural events organized by the petitioner. The petitioner itself has not documented its plans to sponsor any cultural events either on the hotel premises or in the community. 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)).

Accordingly, the AAO must conclude that the primary purpose of the petitioner's international exchange program is productive employment in typical hotel industry positions, 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). The presence of the foreign employees may contribute to some guests' overall experience at the hotel. However, the fact remains that the participants will be spending the vast majority of their time on a daily basis performing the standard duties of front desk agents or food and beverage servers, during which periods their cultural interaction with resort guests will be limited to informal and superficial cultural exchanges.

Based on the foregoing discussion, the petitioner has not established that its cultural exchange program satisfies the cultural and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(iii)(B) and (C). Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.