

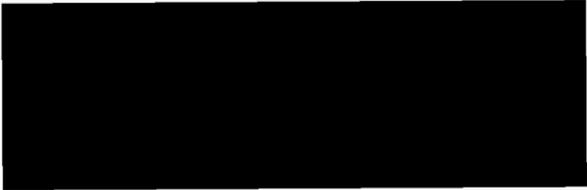


U.S. Citizenship
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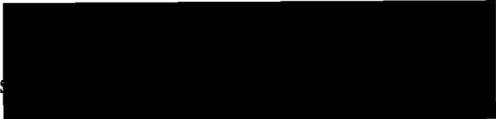
D10



FILE: EAC 09 216 51733 Office: VERMONT SERVICE CENTER

Date: OCT 06 2009

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(Q)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(Q)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center approved the nonimmigrant petition and certified his decision to the Administrative Appeals Office (AAO) pursuant to the regulation at 8 C.F.R. § 103.4(a). The AAO will affirm the director's decision and approve the petition.

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). The petitioner operates a non-profit educational and cultural exchange program headquartered in Washington, DC. It seeks to employ the 18 beneficiaries temporarily in the United States as cultural exchange visitors for a period of 15 months.

On September 8, 2009, the director issued a decision recommending approval of the petition and certified his decision to the AAO. The director determined that the petitioner's program is eligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act.

The regulation at 8 C.F.R. § 103.4(a)(2) allows an affected party 33 days from the date of the service center director's decision to submit a brief in the certification proceeding. Counsel for the petitioner has informed the AAO that he does not intend to submit a brief and has waived the right to do so. Therefore, the record of proceeding is complete.

Section 101(a)(15)(Q)(i) of the Act defines a nonimmigrant in this classification as:

an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.

The regulation at 8 C.F.R. § 214.2(q)(3) provides:

International cultural exchange program. -- (i) *General.* A United States employer shall petition the Attorney General on Form I-129, Petition for a Nonimmigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified nonimmigrant aliens to be admitted in Q-1 status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

* * *

(iii) *Requirements for program approval.* An international cultural exchange program must meet all of the following requirements:

(A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component.* The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

The issue to be addressed in this proceeding is whether the petitioner established that its proposed program is eligible for designation by USCIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. Specifically, the director determined that the petitioner's program meets all requirements for approval pursuant to the 8 C.F.R. § 214.2(q)(3)(iii), in that: (1) the cultural sharing occurs in a school setting where a substantial portion of the participating schools' populations have direct access; (2) the cultural component of the program is composed of instructional activities designed to exhibit or explain the attitude, the customs, history, heritage and traditions of the cultural exchange visitors' home country; and (3) the work performed by the program participants at the host schools will serve as the vehicle to achieve the objectives of the cultural component.

The petitioner operates a program whereby it recruits cultural exchange visitors from Japan, China and Korea for internships at United States primary and secondary schools that seek to supplement their curricular offerings with Asian cultural and language classes. The details of the program are arranged by the host school and the cultural exchange visitor based on the needs of the school and the cultural interests of the visitor, thus

the exact structure of the program varies from host school to host school. However, the petitioner has submitted sufficient evidence related to past program participants to establish that the cultural activities are carried out in a structured manner according to the petitioner's guidelines. The participating interns present instructional activities designed to enrich or supplement the schools' existing curricula with age-appropriate cultural and language lessons and courses. The substantial evidence in the record further establishes that program participants are utilized by the schools solely or primarily to assist teachers with cultural and language lessons, or to provide supplemental enrichment lessons, and not to perform general instructional or other non-cultural duties unrelated to the program's cultural component. The petitioner has demonstrated that the participating interns document their activities and accomplishments in a monthly report submitted to the petitioner's U.S. and overseas offices to ensure program quality and compliance.

Upon review of the record of proceeding in its entirety, the AAO concurs with the director's determination that the petitioner operates an international cultural exchange program satisfying all the required components prescribed at 8 C.F.R. § 214.2(q)(3)(iii). Accordingly, the director's decision will be affirmed and the petition will be approved.

Although the petition will be approved, the AAO notes that the regulation at 8 C.F.R. § 214.2(q)(7)(iii) states: "An approved petition for an alien classified under section 101(a)(15)(Q)(i) of the Act is valid for the length of the approved program or fifteen (15) months, *whichever is shorter.*" (Emphasis added.)

The petitioner has requested that all 18 beneficiaries be granted Q-1 classification for a period of 15 months. Upon review of the host school applications and invitation letters issued to the beneficiaries, it is noted that none of them will participate in the petitioner's program for 15 months. Six beneficiaries have been invited to participate in the program at host schools for five or six months, five have been invited for 9 or 10 months, three have been invited for 12 months and one has been invited for 14 months. The record contains no invitation letters for the remaining three beneficiaries, although the petitioner has identified the names and locations of their host schools. Also, given that the petitioner's program takes place in elementary and secondary schools which traditionally have a two to three-month break between academic years, it has not been established that the beneficiaries would be performing services consistent with the program during the summer months. Therefore, the director is instructed to carefully review the actual intended dates of program participation rather than granting the requested 15-month period of Q-1 classification. If necessary, the director should issue a request for additional evidence to clarify the dates of the individual beneficiary's intended program.

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 been met.

ORDER: The director's certified decision dated September 8, 2009 is affirmed. The petition is approved.