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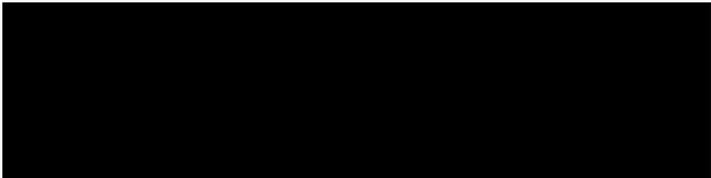
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U.S. Department of Homeland Security  
U.S. Citizenship & Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE: EAC 10 081 51573 Office: VERMONT SERVICE CENTER Date: **APR 22 2010**

IN RE: Petitioner:  
Beneficiaries:



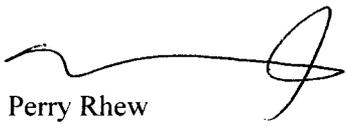
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(Q)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(Q)(i)

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 denied 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 withdraw the director's decision in part and affirm the denial of 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 four beneficiaries temporarily in the United States as cultural exchange visitors for a period of approximately 13 months. The beneficiaries will be assigned to work as interns at elementary and secondary schools located in Ohio, Vermont, Colorado and Massachusetts.

On February 16, 2010, the director issued a decision recommending denial of the petition and certified his decision to the AAO. The director determined: (1) that the petitioner's program is not 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; and (2) 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.

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. The petitioner has timely submitted a detailed brief and additional documentary evidence.

Upon review of the totality of the evidence in the record, the AAO will withdraw the director's decision in part and deny the petition.

## **I. The Law**

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 regulation at 8 C.F.R. § 214.2(q)(4)(i) further states:

*Documentation by the employer.* To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the 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 exchange program and who will serve as a liaison with the Immigration and Naturalization Service;
- (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 participant(s).

## **II. The Petitioner's International 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 USCIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. 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 director determined that the petitioner's program does not satisfy the public accessibility, cultural component or work component requirements for program approval as set forth at 8 C.F.R. § 214.2(q)(3)(iii).

### **A. Accessibility to the Public**

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 28, 2010. The petition was accompanied by a letter from the petitioner and a copy of a Form I-797A Approval Notice for a Q-1 classification petition filed by the petitioner and approved on December 4, 2009.<sup>1</sup>

The director issued a request for additional evidence on February 4, 2010, the director instructed the petitioner to: "Submit documentation how the public has accessibility to your cultural program." The director advised that the record did not establish how persons who are not students at designated schools can benefit from the program. The director requested documentation demonstrating that the program will involve "outside activities which will be provided to the general public and not just to students attending the respective schools."

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<sup>1</sup> The regulation at 8 C.F.R. § 214.2(q)(4)(iii) provides that the supporting documentation prescribed at 8 C.F.R. §§ 214.2(q)(4)(i) and (ii) must accompany a petition filed on Form I-129 in all cases except where the employer files multiple petitions in the same calendar year. In those cases, when petitioning to repeat a previously approved international cultural exchange program, the petitioner may submit a copy of the initial program approval notice in lieu of the required documentation. Although the petitioner was able to present evidence of a recent Q-1 petition approval, the 2009 approval was from a prior calendar year. Therefore, the petitioner was required to submit the supporting documentation as specified in the regulations.

In response to the RFE, the petitioner confirmed that the central focus of its cultural exchange visitors is the specific school to which they are assigned. The petitioner emphasized that the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(A) provides that international cultural exchange programs may take place in schools, provided that the American public or a segment of the American public sharing a common cultural interest is exposed to aspects of a foreign culture as part of a structured program. The petitioner noted that the school-age population in a given community is in fact a significant segment of the community's population, noting as an example that the town of Barre, Vermont, a school system in which one of the beneficiaries would be placed, has a population of 7,602, of which 2,795 are in elementary and secondary schools. The petitioner further emphasized that the schools that host interns through the program presumably do so because they have an interest in exposing their student population to the Asian cultures represented by the program participants. Finally, the petitioner emphasized that the program is able to reach a "secondary audience" of parents and siblings, and noted that program participants often have opportunities to visit other schools within the same school district.

The director, in recommending the denial of the petition, determined that the petitioner had failed to establish that its program is accessible to the public. Specifically, the director stated:

The beneficiaries will have access to school children . . . . Though the beneficiaries will be working in schools, this is not sufficient evidence to show access to the American public, or a segment of the public sharing a common cultural interest. Further, review of the agreements from the school indicates that the ages being exposed will only be from K through 8<sup>th</sup> grade.

In a brief submitted on certification, the petitioner emphasizes that neither the statute nor the regulations require full accessibility to the public. The petitioner notes that the "regulation prohibits essentially private venues, but specifically mentioned 'schools' as an appropriate place to carry out programs for a 'segment' of the public."

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiaries' proposed activities satisfy the accessibility to the public requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A). The regulation uses examples to set the limits of what is acceptable and unacceptable with respect to public access. As an example of sufficient public access, the regulation specifically mentions that the cultural exchange program may take place in a school. As examples of insufficient public access, the regulation cites "[a]ctivities that take place in a private home or an isolated business setting." *Id.* The petitioner's program involves a level of public access that surpasses these negative examples. The AAO emphasizes, however, that the mere fact that the program takes place in a school is insufficient to establish eligibility under this requirement. For example, a beneficiary coming to the United States solely to teach classes that are part of a school's established curriculum, such as Intermediate and Advanced Japanese, to a limited number of students enrolled in the classes, would not be engaged in cultural sharing activities which could be considered sufficiently accessible to the public or a segment of the public.

Here, the documentation in the record, which includes detailed evaluations completed by host schools and prior participants, establishes that the petitioner's program participants are placed in many different grade levels and classrooms in order to provide cultural enrichment activities to a broad segment of the schools'

student populations. Some participants also assist children in preparing cultural demonstrations for special assemblies and events which are open to the students' families and community, and have opportunities to provide cultural lessons to students in other schools within the host schools' districts or school systems.

Pursuant to 8 C.F.R. § 214.2(q)(3)(iii)(A), the petitioner must also establish that the American public will be exposed to aspects of a foreign culture "as part of a structured program." The petitioner has submitted copies of its program guidelines for international cultural exchange visitors and host schools, as well as curricular materials developed by the petitioning organization, which establish that the program is implemented in the host schools in a structured, albeit somewhat flexible, manner. The petitioner has submitted sufficient evidence related to its own guidelines, requirements, and the experiences of past program participants to establish that the cultural activities will be carried out in a structured manner according to the petitioner's guidelines, and monitored by the petitioner during the duration of the program. The evidence shows that the program participants work with the host schools' teachers to integrate their cultural lessons into the teachers' lesson plans. Thus, while a participant may be teaching calligraphy to art classes one month and traditional dances to a physical education classes the next month, the program is designed in such a way that the participants' lesson activities are always pre-planned, scheduled, and intended to enrich the school's existing structured curriculum.

Based on the foregoing, the AAO finds that the beneficiaries' cultural sharing will occur in a structured manner in school settings where a substantial portion of the participating schools' populations have direct access, and that this structure provides sufficient accessibility to the public, as required by 8 C.F.R. § 214.2(q)(3)(iii)(A).

## **B. The Cultural Component**

In order to satisfy the requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(B), the petitioner must establish that its international cultural exchange program has 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.

In its letter dated January 25, 2010, the petitioner explained that it created its international cultural exchange program "to promote mutual understanding, increase awareness and create meaningful opportunities for interaction between countries," and specifically, to foster the appreciation of Asian cultures among young people. The petitioner indicated that a participating cultural exchange visitor "is responsible for sharing his or her language and various aspects of his or her culture and life." The petitioner further stated:

Our cultural exchange visitors are responsible for performing day-to-day scheduled cultural activities as a "cultural ambassador" to their assigned host school and community organization. Each schedule is individually tailored to the needs of the host. The activities depend on which teachers and students the school identifies as most relevant or interested in the cultural exchange activities. The cultural exchange program encompasses training and presentations concerning various aspects of Asian culture. Our cultural exchange visitors also, as age-appropriate,

introduce their language to the students and provide them an opportunity to converse in their language.

In the RFE issued on February 4, 2010, the director instructed the petitioner to submit, *inter alia*, additional evidence regarding the beneficiaries' proposed duties and a detailed itinerary of daily, weekly, monthly and annual events regarding school activities scheduled by each school and involving the participants.

In response to the RFE, the petitioner stated that "[t]o the extent there is a job description for the Cultural Ambassador, it is set by statute and regulation: 'The sharing of the history, culture, and traditions of the country of the alien's nationality.'" The petitioner emphasized that it chooses the alien through an interview process and "provides the tools to carry out the statutory function and the school or other organization provides the environment in which to do so." The petitioner further indicated that "the host school and Cultural Exchange Visitor determines how best to accommodate [the petitioner's] program within the environment of the host school pedagogical philosophy with the Cultural Exchange Visitor." As such, the petitioner explained that it was unable to provide the requested detailed itinerary for each school and for each beneficiary.

In support of the RFE response, the petitioner submitted: copies of each beneficiary's biographical profile and introductory letter outlining their education, work experience, interests, abilities and areas of cultural expertise; copies of invitation letters issued to the beneficiaries by their respective host schools; and host school application forms completed by each school that intends to receive an international cultural exchange visitor.

The invitation letters specify that each beneficiary will be expected "to share the [Korean or Japanese] language, culture and other traditional subjects," and indicate that they will work in a variety of classrooms. The host schools' identify their needs and interests in more detail on the host application form, such as the level of foreign language to be presented to students, and the specific traditional and cultural aspects of culture to be introduced. For example, the principal of one of the participating schools indicates that the beneficiary may teach beginning Korean to some classes, spend time with the art teacher to teach Korean arts of paper folding and calligraphy, work with the Physical Education teacher to introduce Korean games, and work with the music teacher to share Korean music. Another school indicated that a beneficiary would work as a cultural presenter responsible for meeting with small groups of children for cultural enrichment activities, giving PowerPoint presentations to many classrooms, assisting art classes with various projects, and helping with an annual "second grade gym show."<sup>2</sup>

The director determined that the petitioner did not establish that its international cultural exchange program has a qualifying cultural component. The director found that the petitioner had failed to establish exactly what cultural activities will be conducted or what percentage of time would be devoted to such cultural activities. The director further found that, while instructional activities such as seminars, courses, lecture series and language camps may be qualifying, "[n]one of this has been shown in the beneficiaries' duties or activities." Rather, the director found that "the beneficiaries will be involved in general instructions, participating in physical education, leading dances and possibly working as summer camp counselors."

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<sup>2</sup> The evidence of record shows that the "second grade gym show" was previously held at this school and included several traditional Korean dances which were taught by one of the petitioner's prior program participants and presented to the school board and Vermont General Assembly.

In the brief submitted on certification, the petitioner asserts that the director's analysis is "clearly incorrect." The petitioner emphasizes that the materials submitted in response to the RFE were sufficient to establish that the petitioner's program has a qualifying cultural component. Nevertheless, the petitioner submits additional evidence including the petitioner's "Program Guide for Hosts," copies of monthly and end-of-program reports and evaluations prepared by recent program participants; host school reports and debriefing materials; curricular materials for interns; intern application and interview evaluation materials; program guidelines for participants; and copies of previous invitation letters, beneficiary profiles and host application forms.<sup>3</sup>

Upon review, the AAO disagrees with the director's determination. The totality of the evidence in the record supports the petitioner's claim that its program has a cultural component composed of instructional activities designed to exhibit or explain the attitude, the customs, history, heritage and traditions of the cultural exchange visitors' home country. The participating interns present instructional activities designed to enrich or supplement the schools' existing curricula with age-appropriate cultural and language lessons across the curriculum. The proposed activities are not as formal as the "seminars, courses, lecture series and language camps" mentioned in the regulations. However, the enrichment activities are suited to the audience and the qualifications of the instant beneficiaries, who are not qualified teachers, but rather college-aged interns. The activities described in the participants' and host schools' reports include activities introducing students to their home countries' language, traditional arts and crafts, sports, games, folk tales, cuisine, holidays and other aspects of their culture.

The petitioner has also demonstrated that the participating interns document their cultural activities and accomplishments in monthly reports submitted to the petitioner's U.S. and overseas offices to ensure program quality and compliance, and provide feedback to the petitioner regarding each school's understanding of and compliance with achieving the cultural objectives of the program.

Based on the foregoing discussion, the petitioner has established that its international cultural exchange program has a cultural component which is an essential and integral part of the international cultural exchange visitors' employment or training, and which is 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).

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<sup>3</sup> The AAO acknowledges the petitioner's claim that some or all of these materials were submitted with previous petitions and already reviewed by the service center and the AAO. It is worth emphasizing 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). While the petitioner correctly states that the director did not specifically request, for example, the evidence related to prior program participants, the AAO notes that such evidence would have been responsive to the director's more general request that the petitioner submit "persuasive evidence" establishing that the petitioner's program complies with all requirements for Q-1 classification, and would have aided the director in making a fully-informed determination regarding the petitioner's eligibility.

### **C. The Work Component**

In order to satisfy the requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(C), the petitioner must establish that the international cultural exchange visitor's employment or training serves as the vehicle to achieve the objectives of the cultural component and is not independent of the cultural component.

The director determined that the petitioner "has not established that the work component would not be operated independently from the cultural component." The director's certified decision does not contain any further discussion regarding the work component of the petitioner's program or why the evidence fails to establish eligibility.

The AAO will withdraw the director's determination. The petitioner has established that its program participants are utilized by the host 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 administrative duties unrelated to the program's cultural component. While the petitioner acknowledges that participants will occasionally be asked to assist teachers with non-cultural activities, the AAO finds sufficient evidence to establish that such non-cultural activities are in fact occasional and not the basis for the program.

Upon review of the record of proceeding in its entirety, the AAO concludes 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).

### **D. Duration of Program**

However, the AAO does concur with the director's observation that the petitioner has not clearly established what, if any, cultural activities the beneficiaries' would be engaged in the summer months or during any other extended school breaks. Because the petitioner's formal program is school-based, the AAO finds it reasonable to determine the petitioner's eligibility based on the activities that will take place at the host schools during the regular school year, and to limit the period of approval in accordance with the length of the academic school year.

The director specifically inquired about summer activities in the request for evidence. In response, the petitioner referred to the host school agreements, noting that the agreement specifies that if the period of stay extends into the summer months, the cultural visitor will either participate in local educational summer programs or in other activities "in furtherance of the cultural visitor's mission." However, the petitioner's supporting documentation shows that neither the host schools nor the program participants are under any obligation to the petitioner to engage in cultural activities during summer breaks. Most former participants reported that they spent their summer traveling in the United States. The petitioner also submits a document titled: "International Presenters Program – Asia" designed for U.S. schools, which indicates the following in its "frequently asked questions" section:

Q: What happens during the vacations?

A: During school breaks there is no need for host schools and families to provide activities and accommodation for presenters. Presenters are entirely responsible for their own arrangements at these times and many take the opportunity to travel or study.

The regulation at 8 C.F.R. § 214.2(q)(1)(iii) states:

Duration of program means the time in which a qualified employer is conducting an approved international cultural exchange program in the manner as established by the employer's petition for program approval, provided that the period of time does not exceed 15 months.

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.) Based on the evidence in the current record, it would not be appropriate to grant a petition approval that included the summer break between academic school years, as the beneficiaries are not participating in the cultural program during this period of time.

### **III. The Aliens' Wages and Working Conditions**

The second issue to be addressed is whether the petitioner established that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed. 8 C.F.R. § 214.2(q)(4)(i)(D). The regulation at 8 C.F.R. § 214.2(q)(ii)(B) states that the petitioner must report the international cultural exchange visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers.

The petitioner stated that the beneficiaries will receive an allowance of \$100.00 per month, as well as room, meals, incidentals and local transportation, a compensation package which the petitioner values at over \$8,500 per year. The petitioner stated that such package is "well in excess of what a young American seeking work experience would receive in similar circumstances."

In the RFE, the director observed that "it does not appear the participants will be receiving a livable wage while working as cultural ambassadors," and noted that "the record does not provide information regarding an appropriate salary or wage that will be provided to the beneficiary." The director therefore instructed the petitioner to submit: (1) agreements between the petitioner and each host school establishing how program participants will sustain themselves during the validity period requested; (2) documentation of the remuneration agreement between the petitioner and host schools, and, if applicable, between the host school and each participant; (3) evidence establishing the prevailing wage for an intern who is performing duties and responsibilities similar to those required of each participant; and (4) documentation demonstrating how previous participants sustained themselves while participating in the program.

In response, the petitioner indicated that there are no "cultural exchange visitors" in the domestic work force. The petitioner referred to Americorps as an organization employing domestic workers in similar roles, and noted that such workers receive "a stipend which allows them to obtain room and board at a minimal level." The petitioner

stated that it provides the beneficiaries with the actual housing and board, rather than a monetary stipend, but that the compensation is otherwise comparable to that received by Americorps participants.

The petitioner further asserted that "interns today – even those performing highly complex work – are almost never paid." The petitioner noted that the people who participate in the petitioner's program do not do so for financial gain, but because they want to help Americans understand their culture, to learn about American education, to improve their English, or to bolster their resumes with an international experience. The petitioner further stated: "It is true that the schools consider the Cultural Exchange Visitors 'unpaid interns,' but we do not since they are not in light of our responsibilities to them."

The petitioner submitted invitations issued to the beneficiaries by the host schools, which state the following: "As a non-salaried intern, you will not be financially compensated nor paid for your internship activities in our school." According to the host school agreements, the schools agree to: (1) provide free lunches for every school day worked; (2) arrange the intern's transportation to and from school; and (3) assist with finding suitable Host Family or non-family accommodation. Contrary to the petitioner's claims, the host families acknowledge in the applications that they will provide room and board, including all meals, and utilities for which the intern will contribute no more than \$200 per month to help defray living expenses.

The director denied the petition, determining that the petitioner did not demonstrate that the beneficiaries will receive wages comparable to those of local domestic workers similarly employed. The director noted that while the petitioner claims that the beneficiaries will receive a stipend in the amount of \$100 per month, the host applications indicate that the program participants are required to pay up to \$200 per month in room and board to the host family.

On certification, the petitioner states that it "comprehensively explained" how each cultural visitor would receive wages comparable to those of local domestic workers similarly employed. The petitioner further states:

As these documents made clear, the cultural visitor will receive \$100.00 per month for out-of-pocket expenses as well as free room and board. The [petitioner] and the host have negotiated a payment of \$200.00 per month for the room and board (although worth more), and this amount is transferred to the cultural visitor for payment to the host family along with the cultural visitor's \$100 per month stipend. The cultural visitor does not pay the \$200.00 out of his or her pocket, as the [the petitioner's] submission makes clear, and the \$200.00 is not included as an additional monthly stipend because it is only a transfer to the host family.

Upon review, the evidence of record does not support the petitioner's statements regarding its financial obligations to the beneficiaries, or its contention that the beneficiaries would receive wages or other compensation comparable to local domestic workers.

Although the petitioner has submitted copies of host school applications and host family applications, there is no evidence of the specific agreement in place between the petitioner and the program participants, setting forth the amount of the monthly stipend and how it will be paid.

The petitioner indicates that it pays the beneficiaries' room and board by transferring an additional \$200 per month to each beneficiary, which they in turn provide to their host families. However, the petitioner's "Guide for Hosts," which is submitted on certification, lists the various obligations of the petitioner, the interns, the host schools and the host families. It indicates at page 5 that the participating interns are required to personally pay for their own airfare, insurance, accommodation and personal expenses, as well as return airfare. The guide indicates that the interns contribute a pre-agreed fee to the host family to help defray expenses. Moreover, the evidence indicates that the interns are responsible for arranging (and presumably paying for) their own accommodations during summer months or other extended school breaks.

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).

The petitioner has not established that it pays for the beneficiaries' room and board expenses during the course of its program, which undermines its claim that it is offering a compensation package valued at \$8,500. Even if the petitioner had demonstrated that it provides the beneficiaries with the claimed \$300 per month, the petitioner has not established how such payments would be valued at \$8,500 annually (as opposed to \$3,600 annually). 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)).

Furthermore, while the petitioner claims that its compensation package is comparable to that paid to Americorps volunteers, even the unsupported \$8,500 figure is significantly lower than what the petitioner claims an Americorps worker receives. The evidence submitted by the petitioner shows that an Americorps member in Vermont receives a salary/living allowance of \$12,000 per year, plus health insurance, and an Education Award of \$4,725 at the end of his or her program. The petitioner has not provided comparative data for similarly employed domestic workers in Denver, Colorado, Pembroke, Massachusetts, or Brookville, Ohio, the locations of proposed employment for the other three beneficiaries.

In addition, based on the petitioner's "Program Guidelines & Terms and Conditions," all program participants pay a "registration fee," "program fees," and "accommodation fees" in order to participate in the program. The petitioner has not disclosed the amount or exact purpose of these fees. The program guidelines also indicate that "placements are un-paid," and makes no reference to the payment of a monthly stipend by the petitioner. Based on this information, it appears that the program participants may have a greater financial obligation to the petitioner than the petitioner does to the participants themselves.

The AAO acknowledges the petitioner's claim that many "internships" throughout the United States are unpaid, even in situations in which interns may perform complex duties similar to those performed by a salaried employee.<sup>4</sup> However, the Q-1 regulations specifically require the petitioning employer to "offer the

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<sup>4</sup> The existence of unpaid internships in the United States, by itself, does not bolster the petitioner's argument. The Department of Labor has noted that unpaid internships, especially where the employer that

alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed." 8 C.F.R. § 214.2(q)(4)(i)(D). Therefore, it is reasonable to conclude that the regulations require that the petitioner to pay the beneficiaries actual wages commensurate with their duties.

This finding should not be construed as a conclusion that the participating schools are merely seeking, or that the petitioner is merely seeking to provide, free or inexpensive labor to fill positions within American schools. The AAO recognizes the value of the petitioner's cultural exchange program and does not doubt the intentions of the parties involved or their commitment to the objectives of the program. However, the petitioner's decision to structure the program as an "unpaid internship" with the majority of the financial responsibility falling on the participants' themselves, is contrary to the regulatory requirements that must be adhered to by qualified employers.

Based on the foregoing discussion, the AAO concurs with the director's determination that the petitioner has failed to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed. 8 C.F.R. § 214.2(q)(4)(i)(D). Accordingly, the petition will be denied.

#### **IV. Conclusion**

The AAO acknowledges the petitioner's claim that the USCIS has approved many prior petitions filed by the petitioner, including one prior petition that was approved by the service center and certified to the AAO. It must be emphasized that 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 that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous petitions were approved based on the same unsupported assertions that are contained in the current record with respect to the wages offered to the beneficiaries, the approvals would constitute material and gross error on the part of USCIS. The current record introduces new inconsistent claims regarding which party is responsible for paying the beneficiaries' room and board, and the AAO has taken notice that the petitioner requires the beneficiaries to pay fees for their participation in the petitioner's program. 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 USCIS 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).

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provides the internship derives an immediate advantage from the activities of the trainees, may violate the Fair Labor Standards Act and minimum wage laws. *See* U.S. Department of Labor, Wage and Hour Division, Opinion Letter FLSA2002-8, [http://www.dol.gov/whd/opinion/FLSA/2002/2002\\_09\\_05\\_8\\_FLSA.pdf](http://www.dol.gov/whd/opinion/FLSA/2002/2002_09_05_8_FLSA.pdf) (Sept. 5, 2002); *see also* Courtney Rubin, *Watch Out: That Unpaid Intern Could Cost You*, Inc. Magazine, <http://www.inc.com/news/articles/2010/04/what-unpaid-interns-could-cost-you.html> (April 6, 2010).

A review of the AAO's prior decision shows that it was limited to a discussion of whether the petitioner's international cultural exchange program met the requirements for program approval set forth at 8 C.F.R. § 214.2(q)(3)(iii), as it perceived this issue to be the primary reason for the director's decision to certify the decision to the AAO. Unlike the previous petition reviewed by the AAO, the current record clearly raised significant concerns regarding the payment scheme used by the petitioner to compensate the beneficiaries, as the director denied the petition, in part, based on the petitioner's failure to satisfy 8 C.F.R. § 214.2(q)(4)(i)(D). Despite any number of previously approved petitions, USCIS does not have 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.

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 director's certified decision dated February 16, 2010 is withdrawn in part and affirmed in part. The petition is denied.