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



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

810

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 11 2010**

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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.

II. The Petitioner's Cultural Exchange Program

The issue in this proceeding is whether the petitioner established that its Artist-in-Residence program is eligible for designation by USCIS as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 2, 2009. In a letter dated March 31, 2009, the petitioner described itself as a private, operating foundation "with the mission to advance the knowledge and practice of contemporary art in San Antonio and to serve as a conduit for the creation of vanguard art projects." The petitioner stated that "an integral part of this mission is the international exchange of culture through its International Artist-in-Residence Program." The petitioner further described this program as follows:

The International Artist-in-Residence Program was developed to encourage dialogue and exchange of ideas by bringing artists from around the world to live and work at [the petitioner's facility] in San Antonio. [The petitioner] hosts Resident Artists three times a year for eight to sixteen week periods. Throughout their residency, each artist is expected to share the attitude, philosophy and cultural traditions of their home country in the realm of their contemporary art work. [The petitioner] owns a facility in downtown San Antonio that houses its resident artists and their work, as well as provides space for related lectures, symposiums and exhibitions.

Each year nine established and emerging artists working in diverse media are invited to create major new art projects at [the petitioner's facility]. [The petitioner] provides a living stipend, apartment, airfare to and from San Antonio, studio space, studio materials, and use of equipment. Of the nine artists selected to participate in the three residence programs during the year, three (3) slots are for Texas artists, three (3) slots are for artists from throughout the U.S., and three (3) slots are for artists from around the world. Each residence program involves three artists at a time for a two to four month period.

The petitioner further described the "public cultural component" of its program as follows:

The artist's residency culminates in a public opening to share the work created during the term of the residency program. The creation of the work occurs at [the petitioner's facility], which is visited frequently by local artists, patrons, as well as by visiting artists and the public at large. There are, therefore, ongoing opportunities for the resident artist to share their culture with the public and other artists from around the US. It is important to note that [the petitioner] already has a significant national and international following and is looked upon by artists, art critics and art patrons as a significant source for what is happening in the international contemporary art scene.

The artist is asked to engage in a public dialogue moderated by a visiting art critic or curator on the day the artist's exhibit opens to the public. This is an open dialogue, which provides a forum for the interaction of ideas, culture, education, and history behind the opened installations created

by the artist during the residency with [the petitioner]. In short, it provides yet another, direct opportunity for the exchange of the cultural influence from the artist's home country. Additionally, as part of the program, the artists are asked to lecture at local galleries, lead workshops and otherwise permit the local community to benefit from their expertise, talents, culture, and history during the term of their residence.

* * *

The entire Artist-in-Residence Program is specifically designed to exhibit the attitude, history, philosophy, heritage, customs, or traditions of the artist's country of nationality. [The petitioner] strives to attract artists from other countries as residents to enhance the local community through exposure to artists with diverse cultural backgrounds through lectures, exhibits, informal gatherings, and other forums. In short, the precise purpose is cultural exchange.

The petitioner provided information regarding the beneficiary's education and career. The beneficiary is a German-born artist who has resided in the United Kingdom since 1995. The petitioner noted that "[the beneficiary's] use of watercolor on canvas is one of the distinguishing features of her paintings," and stated that her "recent paintings have focused on the subject of dance and are derived from found photographs documenting dance performances."

The petitioner provided evidence that it had obtained an approval for a Q-1 classification filed on behalf of another beneficiary in January 2009, and submitted copies of this approval notice and two other approvals obtained in 2008.

As evidence of the beneficiary's qualifications, the petitioner submitted her detailed resume and numerous articles discussing her work. A biography discussing the beneficiary's exhibition at the [redacted] in Japan described her work as follows:

[The beneficiary] initially created images of Los Angeles and Las Vegas cityscapes and gardens. These works were painted exclusively in the unorthodox medium of watercolor on canvas and were based on both found and taken photographic images. . . . [The beneficiary's] work subsequently more closely examined the artificial interior, focusing concurrently on images of carefully constructed English gardens as well as showgirls and performances housed within casinos located on the previously depicted "Las Vegas Strip."

[The Beneficiary's] [redacted] exhibition represents both a further refinement and development in the artist's practice. Concentrating on source material more closely related to the body and its position within and relation to constructed space, the artist draws upon source material as wide ranging as images documenting performance work of American artist [redacted] to posed photographs of punk-rock musicians.

Another brief biography states:

[The beneficiary] typically works from photographic images and uses her materials 'in such a way as to bring the transparent quality of the paint into conflict with the clarity of the photographic image.' While her work always addresses the practice of painting through its concerns with the physicality of paint and surface, her subjects have ranged from the Royal Botanic Gardens at Kew and the cityscapes of Los Angeles and Las Vegas to the nostalgic glamour of [REDACTED] musicals and the ballets of Nijinsky: subjects in which a tension between the artifice and reality is both manifest and blurred.

Finally, another recent article discusses the beneficiary's work as follows:

Her paintings are distinguished by a dialogue with photography and the unusual use of watercolor on canvas. Her most recent paintings focus on gesture and depict dancers in choreographed groupings using a restricted palette of silver. These paintings which reference such works as *Le Train Blue*, a performance of the Ballet Russes which debuted in 1924, parallel abstraction as a language that applies to both dance and the visual arts/painting.

The petitioner submitted information regarding its facilities and its public programs, which include artists' dialogues, artist workshops, artist-led gallery walkthroughs, and other tours and lectures. The petitioner describes itself as a "creative laboratory" with effectively fifty percent of its yearly calendar devoted to art production.

The director issued a request for additional evidence ("RFE") on April 9, 2009. In the RFE, the director observed that the petitioner's program description "does not identify the specific national culture that will be provided by the participant to the general public other than a general form of art, which by itself is associated with culture." Specifically, the director found that the initial evidence "does not establish a demonstration of the German national culture as part of your program," and requested that the petitioner explain whether the beneficiary will "provide aspects of the German culture through the use of art created by the participant during the three-month internship program." The director further observed that the petitioner did not provide details establishing the amount of time a participant would be involved in interacting with the public or presenting the program to the public.

Accordingly, the director requested that the petitioner submit the following additional evidence: (1) a detailed job description for the artist-in residence position being offered to the participant; (2) persuasive documentation establishing the participant's integral role and participation in the administration of the program; (3) an explanation regarding the objectives of the cultural component for the program as it relates to the participant; (4) detailed, persuasive evidence establishing the amount of time participants spend accomplishing their respective duties and responsibilities, including a description of a normal work day or week; (5) a detailed itinerary or schedule of daily/weekly/monthly activities relating to the program, which includes all public events such as

lectures, presentations, etc.; and (6) copies of any contractual agreement or letter of understanding between the petitioner and the beneficiary.

In a response dated April 24, 2009, counsel for the petitioner reiterated that the petitioner's mission is to serve "as a laboratory for the creation and advancement of international contemporary art," and that it continues to have as its core goal "to promote the exchange of culture and ideas." Counsel explained that by inviting resident artists from Texas, other regions in the United States, and foreign artists the petitioner "promotes dynamic interaction between local, national and international perspectives and experiences, acknowledging the increasingly culturally diverse complexion of today's art world and audiences." Counsel stated that the participants engage with the local population through free programs "which emphasize the cultural backgrounds of each artist and demonstrate how the cultural force of art can reflect and affect contemporary society."

In addressing the public accessibility of the program, counsel noted that it takes place at the petitioner's public facility and at sites throughout San Antonio with collaborating schools, universities and partnering organizations. Counsel stated that the participating artists are exposed to many audiences, including elementary school and teen audiences, through the curriculum linked "ArtElements" program. Counsel noted that each residency begins with a "community potluck" event during which the artists "present an illustrated lecture about their artwork and their heritage." Counsel indicated that the petitioner maintains its normal viewing hours on Wednesday through Sunday from 12 p.m. to 4 p.m. throughout the residency, and offers school tours on Mondays and Tuesdays, during which children are able to visit with the resident artists.

Counsel explained that, at the public viewing opening reception for their exhibitions, the resident artists join together for an Artists' Dialogue, "offering observations about the different experiences each artist had during their residency, how they interacted with each other, and how the eight-week residency changed their work or approach to art making and broadened their cultural or political perspectives." Counsel noted that the petitioner's direct-mail public relations campaigns alone reach more than 20,000 households and ensure that its programs are well-advertised to the population of the San Antonio metropolitan area.

With respect to the program's cultural component, counsel stated:

The cultures, histories, traditions, and perspectives that each artist brings to [the petitioner] are an essential and valued component of the [International Artist-in-Residence] IAIR Program. The mix of international, national, and regional background fosters a unique and varied cultural exchange between the community and the visiting artists. Depending on the artist's nationality and interests, such exchanges take many forms, from school tours and public lectures to a more customized program.

Counsel provided examples of work performed by previous artists, referencing the following prior participants: a Japanese artist who planned a Japanese New Year celebration with the local Japan-America society and taught visitors and students about traditional Japanese *wasli* paper and historic painting techniques she used in creating

her art; an Indian artist who taught local teenagers an outdoor rice flour drawing technique traditionally practiced in India; a Scottish artist who served Scottish food and sang Scottish folk songs during her community potluck; a Korean artist who recreated his ancestral home in a sculptural installation that provided the basis for a study of Asian architecture; and a Pakistani artist who spoke to audiences about the tradition of miniature painting.

With respect to the beneficiary, counsel states that she is "keenly interested in the ways that her native German culture is interwoven into the fabric of Texas" and "plans to explore the resonance of 19th century emigration to Texas as a central component of her residency." Counsel stated that the beneficiary would feature this cultural explanation in her Community Potluck presentation on June 4, 2009, and throughout her community interactions during her residency. Counsel noted that the beneficiary's opening exhibition and Artist Dialogue is scheduled for July 16, 2009. Counsel further stated:

[The beneficiary's] German heritage, her interest in the German culture that has historically infused the Central and South Texas region, and her unique approach to the traditional medium of watercolor provides an opportunity to welcome students from area colleges and universities; offer a familiar entry point to engage the interest of those with limited exposure to contemporary art; and appeal to cultural theorists, sociologists, historians, performers, botanists and others whose professions related to [the beneficiary's] subjects.

Finally, counsel addressed the work component of the petitioner's [redacted] program, noting that the "primary goal of the residency is to give artists a space in which to imagine new ways to work while making possible unique sharing of cultures and highlighting the role of living artists in today's world." Counsel stated that a successful residence "enables the artist to create challenging new works of art . . . resulting in significant new directions in the artists' work, impacting audiences of all cultures, and receiving further opportunities for critical response, sharing, and exposure through subsequent exhibitions and placement in collections."

Counsel explained that the artists live at the petitioner's facility and "produce a work or works of art which will promote the sharing of international cultures, as well as engage with the public during the residency." The artists have access to a 24-hour workshop and individual studio spaces located within the petitioner's public facility, which are transitioned to gallery spaces to showcase the final work. Counsel further stated:

While in-residence, the artists' time is predominantly self-structured and their work hours in the studio or at events are 100% devoted to accomplishing the cultural components/activities of the program. The three-page . . . Calendar and Deadlines at Exhibit B demonstrates that the majority of their time is spent in public spaces, either at [the petitioner's] facilities (including their studios) or at area schools and centers. The artists participate in both [the petitioner's] regularly scheduled events as well as public events scheduled around the artist's availability.

Counsel noted that school tours of the petitioner's facility, including interaction with the artists, will be held on Mondays and Tuesdays throughout May 2009; a visit to JT Brackenridge school is scheduled for the morning of

May 22; a "Meeting Resident Artists Welcome Lunch" is scheduled for May 27; a Community Potluck will be held from 6:30 to 8:00 on June 4; a Brown Bag lunch will be held on June 10; a camp will be held from 9:00 to 5:00 daily the week of June 15, a "Gallery Notes" interview is scheduled for June 23, the exhibition opening including studio visits, lunch, press interviews, public opening and artists' dialogue, will be held from 10:00 to 7:00 on July 16; and a photography walk-through of the exhibition is scheduled for July 17. Counsel indicated that, by appointment, the public will have access to the artists and their studios during public hours on various dates in May, June and July 2009.

The petitioner submitted extensive evidence in support of the RFE response, including informational and promotional materials and brochures; a calendar of public events and public hours for the months of May, June and July 2009; literature distributed at previous Artist-in-Residence events; brochures and photographs evidencing the "work and cultural expression" of previous participants from India, Japan, Pakistan, India, Scotland, Korea and Sweden; photographs of Community Potluck and Brown Bag events; letters from schools and organizations that have participated in the petitioner's programs; and media articles regarding the petitioner's program.

The petitioner also submitted a copy of its letter of understanding with the beneficiary, who agrees to produce a work or works of art at the petitioner's facility between May 26, 2009 and July 20, 2009. The letter stipulates that the works will be exhibited between July 16 and September 13, 2009. The beneficiary was asked to prepare a description of the proposed work and a budget for producing the work. The letter contains the following information regarding the petitioner's expectations of the artist:

During your residency, we hope that you will be available on a reasonable basis to the San Antonio art community. While always respectful of your privacy, school tours are an important part of our education programming and students are always thrilled to see an artist/artwork in process. Please contact the education staff if you have questions about groups entering your space while you are in residence. We ask that you participate in at least one public activity (a student workshop, a lecture, film night, etc.), in addition to our ongoing programs – an introductory potluck at or near the beginning of your Residency, the opening celebration, and the artists' dialogue and studio visits. Near the end of your Residency, we ask you to participate in an exit interview to provide feedback to us on your experience at [the petitioner's facility].

Finally, the petitioner submitted an exhibit labeled "Evidence regarding the emigration and settlement of Germans in Texas and how the Beneficiary's native German culture is interwoven into the fabric of the state," which includes several articles on the emigration of Germans to Texas in the 19th century.

The director denied the petition on May 8, 2009, determining that the petitioner did not establish that its International Artist-in-Residence program is eligible for designation by USCIS as an international cultural exchange program pursuant to section 101(a)(15)(Q) of the Act. The director observed that the petitioner did not persuasively establish the public accessibility of the program, and did not establish that the essential element of

the beneficiary's work would be to share her culture with the American public. Rather, the director found that the majority of the beneficiary's work would be largely independent of the cultural component of the international cultural exchange program. Thus, the director determined that the petitioner does not have an international cultural exchange program satisfying all the required components prescribed in 8 C.F.R. § 214.2(q)(3)(iii).

On appeal, counsel for the petitioner asserts that the petitioner's International Artist-in-Residence program satisfies all requirements for a qualifying international cultural exchange program as set forth in the Act and regulations. Counsel summarizes her argument on Form I-290B, Notice of Appeal or Motion, as follows:

1) The international exchange program takes place in a museum that is fully accessible to the public. Most activities and artist work hours are held at the [petitioner's] museum. Activities related to the program that do not take place at [the petitioner's] museum are held at schools, universities or community centers; 2) [the petitioner's] international cultural exchange program performs only work that has a cultural component. The sharing of attitudes, customs, and traditions is an essential and integral part of the program. Cultural exchange is the primary reason why the program is structured to include an international artist in each of its sessions; 3) the artist spends 100% of his or her employment accomplishing the cultural component of the program. The work component is not independent of the cultural component of the exchange program. The international artists are required to participate in scheduled and structured public events, seminars, lectures, tours and exhibits. The remainder [*sic*] of the artists' time is to be spent creating their works of art which serve as visual forms of communication that help the artists share the culture of their home country. All aspects of the artist's work at [the petitioner's facility] is geared toward accomplishing the cultural component of the program.

Counsel's arguments are explained in detail in a lengthy brief accompanying the appeal, and supported by newly-submitted letters of support and other documentation.

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)(iii). Specifically, the petitioner failed to establish that the beneficiary would be engaged in employment 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 beneficiary'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)(iii) pertaining to the program's public accessibility, cultural component and work component.

Accessibility to the Public

In order to satisfy the regulatory requirement at 8 C.F.R. § 214.2(q)(3)(iii)(A), the petitioner's 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.

In denying the petition, the director acknowledged the petitioner's statements that the beneficiary would be involved with the public through lectures, presentations and other scheduled events, but found that the petitioner failed to submit requested evidence as to how much of the beneficiary's time would be devoted to involvement in cultural activities that include exposure to the public. The director noted that the petitioner failed to describe the beneficiary's typical workday or workweek, and thus did not establish "the participant's routine activities with the public."

On appeal, counsel emphasizes that the petitioner's international cultural exchange program takes place primarily in its museum, a venue that is specifically mentioned in the regulations. Counsel notes that the museum is open to the public daily five days per week and by appointment during non-operating hours, and requires no admission fee, or any other fees for participation in its cultural exchange program lectures, activities or public educational programs. Counsel further notes that the petitioner's program is well advertised to the public, which generates inquiries from schools, universities, galleries and institutions requesting that the artists participate in various public events. Therefore, counsel emphasizes that "no part of the [petitioner's] [redacted] cultural exchange program takes place in a private home or isolated setting."

In addition, counsel states that "all work created by [the petitioner's] international artists during the residency period is produced at studios located within the [petitioner's] museum," and states that "visitors and students have direct access to the artists during their studio work hours and have the opportunity to ask the artists questions about their culture and artist creations." Counsel indicates that the program is designed to provide the public with direct access to artists while art is being produced and during lectures and shows.

The petitioner submits a letter from its Executive Director, [redacted], who explains that the petitioner's program "brings [the artists] into the community, both by having them share their perspectives with visiting school groups and adult audiences . . . and by involving them in the local activities, visiting university art classes and local museum and gallery functions." He states that "the public has an unprecedented opportunity to follow the creative process from its inception, when the artist presents the idea as a proposal in a public lecture . . . through the time of production and eventual completion." [redacted] indicates that the artists often "involve local artists, contractors, students and businesses in the creation of these projects, and the process of realizing the work is a negotiation of different cultural attitudes and perspectives."

Other support letters address the petitioner's receipt of funds from the City of San Antonio Office of Cultural Affairs, which "can only support cultural agencies whose outreach extends to the public," and from schools who have benefited from the petitioner's scheduled activities and tours." SAISD Superintendent [redacted] states that his district's students "have had the unique experience of meeting international artists and viewing their

original works of art during tours, family programs and school collaborations," and that "such experiences enrich our students understanding of the world they live [in], and grant culturally unique perspectives that might not otherwise be accessible in San Antonio." Other letters attest to the participants' willingness to visit local universities to participate in student lectures and discussions.

The petitioner submits a letter from the [REDACTED] who states that the artists in residence "are required to share their native customs and demonstrate the impact of their cultural heritage in art though a full schedule of educational programs and public interactions." He provided examples of previous participants' activities such as a Japanese New Year's celebration with ceremonial dress, and an Indian participant who dressed in her native sari during her public Artists' Dialogue. He states that "not all artists adopt overt manners of sharing their cultural heritage with audiences, and often rely on their artworks as fora for international dialogue." The petitioner includes letters from prior Q-1 program participants who related their experiences in the program, and submits photographs of prior events and exhibits.

Counsel asserts that the evidence establishes that its program is fully accessible to the public of the City of San Antonio, with special efforts made to reach the entire community.

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the activities of the participating artists in residence 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 museum. 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. There is ample evidence to support a finding that the petitioner's facility and outreach programs are valuable and widely-used public resources across many segments of the San Antonio community. The petitioner has established that its International Artist-in-Residence program and accompanying public activities are well-organized, structured, and well-publicized within the surrounding metropolitan area.

Based on the foregoing, the AAO finds that the petitioner's program provides accessibility to the public, as required by 8 C.F.R. § 214.2(q)(3)(iii)(A).

Cultural and Work Components

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. The international cultural exchange visitor's employment may not be independent of the cultural component of the international cultural exchange program,

but rather, 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. 8 C.F.R. § 214.2(q)(3)(iii)(C).

In denying the petition, the director determined that the primary purpose of the petitioner's program is to provide the participant with experience and exposure in the world of art, and not to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the participants' country of nationality. The director acknowledged that there may be some measure of culture-related activity, but could not find that the program as a whole was designed to provide an opportunity for cultural sharing, or that the essential element of the beneficiary's employment would be the sharing of her country of nationality.

On appeal, counsel asserts that the petitioner's Artist-in-Residence program "consists of nothing but a cultural component," and states that the international artists are required to devote 100% of their work hours to accomplishing the cultural exchange goals of the program. Counsel refers to the letters from the petitioner's executives, community leaders, former participants, school officials, students and educators who describe "the unique cultural exchange component" of the program, and emphasizes that "they are required to share their native customs and demonstrate the impact of their cultural heritage in art."

Graduate student [REDACTED] a supporter of the petitioner's program states that the petitioner "hosted lectures for people in the community to understand the thought, content and context behind artworks that often related to the social, political and cultural backgrounds of the artists themselves." A principal at a local high school states that his students are able "to glimpse into the world of creative professionals and understand how their culture, traditions, heritage and working environments influence the artistic process," and "to talk directly with them about living in different parts of the world."

A former resident artist states that the artwork she created while participating in the petitioner's program "involved various references to social and political life in Turkey," while another artist speaks of conducting a workshop in Rangoli (sacred drawing) for local teenagers. Another former participant states that he delivered a public lecture discussing the projects he was completing investigating the history, culture, architecture and customs of the Tijuana, Mexico border region. A former British participant indicates that he devoted his residency to comparing and contrasting the different development of film and video art in the United Kingdom and America.

With respect to the beneficiary, counsel states:

[The beneficiary] represents [the petitioner's] primary purpose of cultural exchange between diverse people. Her painting and drawings explore the interplay of rural and urban aesthetics while illuminating her characters' everyday experiences. Keenly interested in the ways that her native German culture is interwoven into the fabric of Texas, [the beneficiary] plans to explore the resonance of 19th century German emigration to Texas as a central component of her

residency. She planned on featuring this cultural exploration in her Community Potluck presentation on Thursday, June 4, 2009 as well as throughout her community interactions during her residency.

Upon review, the AAO is satisfied that the petitioner's international cultural exchange program has a cultural component which may be an essential and integral part of the international cultural exchange visitor's employment or training. However, the petitioner has not established how the instant beneficiary will exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of her native country of Germany through the creation of her artwork during the residence program.

A review of the extensive evidence submitted with respect to prior program participants shows that many of them entered the program as artists who already explored some aspect of their home country's culture, traditions, or attitudes through their contemporary artwork. Some U.S. resident artists who have been invited to participate in the program are foreign-born and also reflect some aspect of their native culture in their artwork, whether it be in the subject matter, techniques, materials used, or points of view expressed. These cultural influences are reflected in the artists' biographies that accompanied their exhibitions at the petitioner's museum. The AAO notes, however, that this cultural aspect does not appear to be universal among the Q-1 program participants or a necessary component to their residency.

After careful review of the extensive evidence submitted regarding the beneficiary's body of work, the AAO can discern nothing that is culturally German or how she reflects the attitude, customs, history, heritage, philosophy or traditions of Germany through her paintings. It is thus unclear how she intends to "share the attitude philosophy and cultural traditions of her home country in the realm" of her contemporary artwork, as stated by the petitioner. The numerous articles and biographies submitted identify the beneficiary's typical subject matter as American landscapes, cityscapes and popular culture figures, English gardens, and Russian ballerinas, using photographs as her source material. The evidence mentions no German point of view in her renderings, no German influences in her techniques, chosen media, or any other evidence to suggest that her German culture is reflected in the artwork she produces.

This should not be construed as a finding that the beneficiary is not qualified to share her German culture with an American audience. However, the AAO must find that the primary purpose of her employment is to produce a new work or works of art during her residency in the United States for an exhibition in the petitioner's museum. If the artwork itself does not reflect any aspect of her German culture, we cannot find that her residency will include a cultural component that is an essential and integral part of the work she will perform as an artist. The record contains no support for counsel's claim that participating artists "are required to share their native customs and demonstrate the impact of their cultural heritage in art."

The petitioner's letter of understanding with the beneficiary simply states that she agrees to produce a work or work of arts at the petitioner's facility for public exhibition and participate in scheduled events. It contains no statements regarding cultural sharing as a requirement for participation in the program. The beneficiary was

required as part of this agreement to provide the petitioner with a description of her proposed work, and presumably complied with this requirement, but the petitioner has not provided this description or any other indication as to the work the beneficiary intended to produce while in the United States. 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)).

Although the petitioner indicates that the beneficiary is "keenly interested" in exploring how German culture is "interwoven into the fabric of Texas" and intends to "explore" the emigration of Germans to Texas in the 19th century as part of her residency, there is no evidence that such interest or exploration would occur through her artwork. If her exploration of this aspect of German-American history and culture is limited to discussion during her community potluck and a few other events, but is not reflected in her artwork, then it is evident that the cultural component of the beneficiary's residence would be separate from the work component. Again, the petitioner has not provided the beneficiary's description of the work or works she proposed to create during her residence.¹ Absent evidence that she intended to produce a work that reflects her German culture, the petitioner has not established that the work component would serve as a vehicle to achieve the cultural sharing goals of the program.

While the evidence suggests that several previous participating artists have shared their culture, traditions, history or heritage through their artwork, lectures, and other public activities, the evidence does not establish that the instant beneficiary is an artist whose work is deeply influenced by or reflective of the culture of her home country, or that the upcoming session of the petitioner's program has a cultural component designed as a whole to be an essential and integral part of the beneficiary's employment.

For the above reasons, the petitioner has not established that its proposed international cultural exchange program meets the requirements for program approval set forth at 8 C.F.R. § 214.2(q)(3)(iii). Accordingly, the appeal will be dismissed.

III. Prior Approvals and Conclusion

The AAO acknowledges that USCIS previously approved many Q-1 nonimmigrant petitions filed by the petitioner on behalf of various beneficiaries. Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *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). Despite any number of previously approved petitions, USCIS does

¹ The AAO notes that, despite the denial of the instant petition, the beneficiary did exhibit work at the petitioner's museum from July to September 2009 which consisted of "a series of fourteen monochromatic prints that encapsulate the artist's investigation of the different stages of a choreographed movement." *See* <http://artpace.org/aboutTheExhibition.php?axid=329&sort=artist> (accessed on July 22, 2010)

not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

As discussed above, given the petitioner's practice of hosting three different sets of artists in each calendar year, any given session of the program would reasonably be unique based on the characteristics of the artists chosen for residency. For this reason, the AAO finds it reasonable to evaluate the petitioner's program on a case-by-case basis. A session that includes an alien artist whose work is demonstrably tied to the culture of his or her home country would likely meet the cultural and work component requirement set forth in the regulations. The AAO's finding that the petitioner failed to establish that the instant beneficiary would be sharing German culture as an integral and essential component of her employment should not be construed as a finding that any or all prior Q-1 approvals were granted in error. Further it should be noted that we do not question the intrinsic artistic value of the beneficiary's work, or the benefit to the community that undoubtedly arises from the petitioner's artist-in-residence program, educational activities and public outreach programs.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.