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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**

D10



FILE: EAC 09 252 50769

Office: VERMONT SERVICE CENTER

Date:

**AUG 18 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:**

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

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.<sup>1</sup>

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 is self-described as a hospitality management company. It seeks to employ the 59 beneficiaries temporarily in the United States as food preparation and food service workers for a period of eight months, and will assign them to three hotels located in New Orleans, Louisiana. The beneficiaries are citizens of Ukraine, Moldova, Russia, Belarus,

The director denied the petition, concluding that the petitioner failed to establish: (1) that its program is eligible for designation by USCIS as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act; and (2) that it is a qualified employer pursuant to 8 C.F.R. § 214.2(q)(4)(i). Specifically, the director determined that the petitioner failed to establish that its program has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment, or that the international exchange visitors' employment in the United States will serve as a vehicle to achieve the objectives of the cultural component. The director further found that the record did not establish the petitioner, rather than the hotels to which the beneficiaries will be assigned, will serve as the beneficiaries' employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that it is a qualified employer operating a program which satisfies all Q-1 regulatory requirements. The petitioner asserts that the director overlooked statements made by the petitioner at the time of filing and in response to a request for evidence. The petitioner submits a brief and evidence in support of the appeal.

Upon review, and for the reasons discussed herein, the AAO finds that the director properly denied 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

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the Form G-28 is not an authorized representative.

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)(1)(iii) provides:

*Qualified employer* means a United States or foreign firm, corporation, non-profit organization or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the Attorney General in accordance with the provisions of section 101(a)(15)(Q)(i) of the Act.

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. Issues on Appeal**

The two issues before the AAO on appeal are: (1) whether the petitioner's proposed program is eligible for designation, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program, pursuant to the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii); and (2) whether the petitioner is a "qualified employer" pursuant to the eligibility requirements set forth at 8 C.F.R. § 214.2(q)(4)(i).

### **A. The Petitioner's Proposed Cultural Exchange Program**

The first issue to be addressed is whether the petitioner maintains an established cultural exchange program in accordance with the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii).

The director concluded that the petitioner's program does not meet the regulatory requirements pertaining to the cultural or work components. Specifically, the director determined that the petitioner failed to establish that its

cultural exchange program has a cultural component that is an essential and integral part of the international cultural exchange visitors' employment, as required by the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B), or that the international exchange visitors' employment in the United States will serve as a vehicle to achieve the objectives of the cultural component, as required by 8 C.F.R. § 214.2(q)(3)(iii)(C).

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the 59 beneficiaries will serve as Food Preparation and Serving Related Workers. In a letter dated September 10, 2009, the petitioner stated:

[The petitioner] maintains an established international cultural exchange program to promote good relations between the people of different countries and the United States. They assist hotels and other organizations to supplement their staff with international workers and arrange for these workers housing, transportation and other services. The demonstration of [the petitioner's] maintenance of their international cultural exchange program is contained in the copies of the newspaper articles in Attachment 1.

The AAO notes that the referenced newspaper articles identify the petitioner as a regular sponsor of foreign hotel workers employed pursuant to H-2B and J-1 visas. There is no reference in any of the submitted documentation to a Q-1 international cultural exchange program. The petitioner also describes itself as "a hospitality management company [that] primarily provides temporary labor service for hotels in localities where there is a seasonal concentration of labor-intensive positions."

The petitioner stated that the beneficiaries will be employed in positions in which they have "direct interaction and communication with the American public sharing with them the attitudes, traditions, ethnic food and other aspects of their culture." The petitioner noted that the beneficiaries will work in hotel restaurants and their duties will be "to prepare meals and serve meals to patrons, to host new arrivals or work with banquet crews."

The director issued a request for additional evidence ("RFE") on October 1, 2009, in which he advised the petitioner that the initial evidence did not provide persuasive evidence that the company has or intends to implement an international cultural exchange program in compliance with the Q-1 statutory and regulatory requirements. Rather, the director found that the petitioner intends to hire the beneficiaries to fill a labor shortage in the hotel industry in New Orleans. The director instructed the petitioner to submit additional evidence to establish that it operates a structured program of cultural exchange with a cultural component that is an essential and integral part of the aliens' employment. Specifically, the director requested: (1) information regarding the positions each beneficiary will occupy at each hotel location, including a detailed job description for all positions; (2) a detailed description of the petitioner's international cultural exchange program, including an explanation of its cultural objectives; (3) a detailed itinerary or schedule of weekly/monthly/annual cultural activities sponsored by the petitioning organization on a recurring basis; (4) detailed persuasive evidence establishing the amount of time the beneficiaries will spend accomplishing the respective duties and responsibilities related to the program, including evidence demonstrating the percentage of time the beneficiaries will be involved with cultural activities relating to the work component; and (5)

copies of contractual agreements between the petitioner, the beneficiaries and the participating hotels receiving the temporary labor provided by the beneficiaries.

In a response dated November 6, 2009, the petitioner stated the following with respect to the positions to be held by the beneficiaries:

All positions as Food Preparation and Serving Related Workers are related to preparing meals and/or serving meals to patrons. The beneficiaries will not occupy other hotel positions such as for housekeeping, laundry, front desk, maintenance and other hospitality related positions.

The petitioner submitted a chart identifying the worksite, department and position title of all 59 beneficiaries. The beneficiaries will work as servers (7 beneficiaries), cocktail servers (6), room service attendants (9), hostess (2), bussers (9), pre-cooks (4), cooks (20) , and bar porters (2). The petitioner described the positions as follows:

1.) Cocktail Server

The cocktail server serves cocktails and food to customers and assists with stocking supplies and making coffee. The cocktail server keeps work stations clean and sanitary at all times and assists the bartender with duties as needed or requested. . . . The cocktail server demonstrates and promotes positive customer and guest relations and is trained by [the petitioner] to communicate cultural information with guests.

2.) Server

The server is responsible for taking the guests orders, keeping them organized and timing the course of service for your guests. The server is also responsible to make sure that he is not just an order taker, but that he is well-versed in the products. . . . The server is trained by [the petitioner] to inform the customers of the cultural attributes of the server's native country.

3.) Room Service

The room service server is responsible for providing guests with a warm, friendly and hospitable service while delivering guests meals. This is done by providing interesting information about the server's native culture and countries facts as prescribed by [the petitioner] . . . .

4.) Hostess

The hostess greets guests, escorts them to tables and provides menus. The hostess assigns work tasks and coordinates activities of dining room personnel. . . . The hostess insures that guests are informed of interesting facts of the hostess's country of origin as trained by [the petitioner].

5.) Busser

The busser resets tables according to the specifications of the restaurant. The busser removes plates and silverware when all guests have finished and sets up and breaks down the dining

room for each shift. The busser maintains service stations in a clean and orderly manner throughout his shift. The busser is trained by [the petitioner] to share cultural information about his native country.

6.) Cook and Pre-Cook:

Cooks must understand proper preparation technique, memorize certain recipes to ensure consistency, know how to time dishes when they must be completed at once, know how to cook in bulk without generating waste and know how to use commercial kitchen equipment. . . . Cooks must organize kitchen staff schedules, plan regular duties such as cleaning, design menus and make sure cooking activities are coordinated between cooking staff when preparing meals. Cooks are trained by [the petitioner] to communicate cultural information about their native country.

7.) Bar Porter:

The bar porter cleans the bar and equipment and replenishes bar supplies. . . .and stocks refrigerating units with wines and bottled beer. The bar porter replaces empty beer kegs with full ones, slices and pits fruit . . . washes glasses, bar and bar equipment and polishes bar fixtures. The bar porter mops floors and removes empty bottles and trash. The bar porter may mix and prepare flavors for mixed drinks. The bar porter is trained to share interesting cultural information about his home country by [the petitioner].

In its letter dated November 6, 2009, the petitioner further stated:

The cultural objective of [the petitioner's] international cultural exchange program is to provide the opportunity for American people to learn the cultural diversification and to experience international knowledge about other countries, their customs, history, heritage, philosophy and traditions.

It is widely known that America is a country of immigrants and, therefore, is a blend of different cultures gathered from all over the globe. Thus, to enrich the knowledge and appreciation of other cultures, the international cultural exchange program gives the participants an opportunity to learn more about traditions and customs of different cultures from other participants. This program is the same as a communication plaza among foreigners and residents. It also lets them share their great and joyful experience of visiting the different countries.

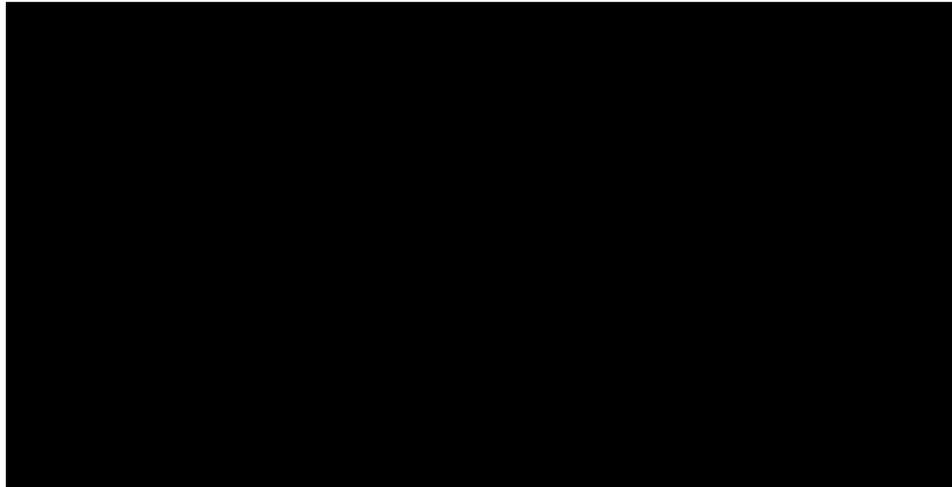
The petitioner addressed each of the Q-1 program requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). With respect to the public accessibility requirement at 8 C.F.R. § 214.2(q)(3)(iii)(A), the petitioner stated that its program takes place in "big hotels" with employees and guests who are "the big segments of the American public always showing a common cultural interest to aspects of a foreign culture."

The petitioner further stated that the cultural component of its international cultural exchange program "exhibits and explains the attitude customs, history, heritage, philosophy and traditions of the alien's country

of nationality." The petitioner noted that its program includes "structured international activities such as bi-weekly international parties and meetings where aliens can also demonstrate their international clothes and cuisine."

The petitioner provided the following list of scheduled cultural activities:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.



The petitioner stated that these international cultural exchange parties "are great opportunities to meet like-minded people to create a network of different languages for info, advice and exchange and to meet up and chat in which ever languages they speak."

Finally, the petitioner addressed the work component of its program as follows:

[The petitioner's] employment is not independent of the cultural component of their international cultural exchange program. [The petitioner] provides special training of the participants in the sharing of culture with the American public and this training is part of their structured program. With this training the work component is the same as a vehicle to achieve the objective of the cultural component. The sharing of the culture of the beneficiaries' nationality is a result from their employment.

This training program prepares participants for employment within the American culture. The program provides pre-employment training for the international guests, covering a variety of topics including effective communication, interview skills, rules and policies for the worksites, appearance guidelines, conflict resolution, body language, how to fill out an application and problem solving. Furthermore, the program teaches participants about important vocabulary they will need in this process and educates them about the "culture of employment" and work environments in the United States. The participants learn about the importance of active listening and communication. They listen to CD lessons about body language and communication skills. This is one of many valuable exercises that the international guests in the program participate in.

The petitioner stated that "the amount of time the beneficiaries will spend accomplishing the respective duties and responsibilities related to [the petitioner's] program expressed as a percentage of work time is 100%." The petitioner indicated that the beneficiaries "will convey cultural information all the time they are working through oral or demonstrative information," such as by "verbally inform[ing] recipients of cultural information" and demonstrating cultural information through "native clothing and food."

The petitioner stated that it was submitting a brochure which provides "a detailed description of the representative program for each of the nationalities identified in this petition." The petitioner attached a brochure titled "Strive for Excellence: Cultural Event." The brochure describes a "Cultural Bridge" program, includes one-page country sheets describing the culture and cuisine of the various countries represented by the beneficiaries, and includes a two-page event calendar listing the events referenced above.

The brochure provides the following information regarding the petitioner and its program:

The specific goal of [the petitioner] is to provide an opportunity for professional chefs and servers to explore and share the uniqueness of their respective cuisines through international travel, work and play. We hope and believe that through a dynamic and professional culinary exchange program, [the petitioner] will foster cooperation, learning and a spirit of friendship between nations and cultures.

The brochure provides brief descriptions of the International Cooking event, International Friendship Party, the International Culinary Exchange program, and "cultural exchange event."

The director denied the petition on November 23, 2009, concluding that the petitioner did not establish that its international cultural exchange satisfies all component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), particularly the cultural and work components. The director acknowledged the petitioner's response to the RFE, but found that the job descriptions provided did not include adequate details explaining how each participant would accomplish sharing his or her national culture while completing the work component, or what percentage of time would be devoted to the cultural component on a day-to-day basis.

The director concluded that the participants' work as hotel cooks and servers is independent of the cultural component, and that the majority of the duties and responsibilities related to serving hotel guests. The director determined that the cultural component of the employment would be "tangential to the hotel's primary purpose of providing guests services to its patrons and guests." The director further observed that a majority of the participants' work would be largely independent of the cultural component of the international cultural exchange program.

On appeal, the petitioner objects to the director's finding that it failed to identify the percentage of time to be spent performing duties related to the cultural component of the program, noting that it specifically stated in its RFE response that "the amount of time the beneficiaries will spend accomplishing the respective duties and responsibilities related to [the petitioner's] program expressed as a percentage of work time is 100%." The petitioner reiterates that the beneficiaries "will convey cultural information all the time they are working

through oral or demonstrative information." The petitioner provides the following additional explanation regarding the beneficiaries' job duties, noting that each position will require that the employees:

- have distinctive name tags indicating their home countries and inform patrons of a presentation to be given later about their home countries such as the culture, cuisine and history;
- wear costumes during this presentation which are examples of notable clothing of their home countries; share interesting cultural information about their home countries;
- answer questions about their culture and home countries;
- be free and willing to answer questions concerning the program and will provide cultural information requested by the patrons.
- develop their abilities, communicative interpersonal skills and knowledge to present their native culture.

#### *Analysis*

After careful review of the record, the AAO concurs with the director's conclusion that the petitioner failed to establish that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3). Specifically, the petitioner failed to establish that the beneficiaries 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 alien's country of nationality.

It is stated in the supplementary information to the current regulations at 8 C.F.R. § 214.2(q), published at 57 Fed. Reg. 55056, 55058 (November 24, 1992):

The Q visa provision is designed to foster "cultural exchange." The statute uses precisely this term and requires that a cultural exchange program have the purpose of "providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality." This language suggests that Congress envisioned a sharing of culture more widespread and accessible than the private cultural exchanges suggested by the commenters. It also suggests that the culture-sharing aspect of the status is the feature distinguishing this from nonimmigrant classifications that are tied solely to employment. Based on this language, the Service has retained in the final rule the requirements that a Q cultural exchange program must have structured public activities with specific culture-sharing goals, and that the cultural exchange visitor's employment or training must serve the cultural objectives of the program. *Where training or employment is the primary reason for an alien's visit to this country, the alien should seek a visa classification that is appropriate for temporary workers, such as H-1B, H-2B, or H-3.*

(Emphasis added.)

Here, the AAO concurs with the director's conclusion that the amount of cultural sharing among the participants and the public would be tangential to the alien's employment, and the majority of the bona fide cultural activities would be independent of the work component of the program. Accordingly, the petition will be denied.

(A) *Accessibility to the Public*

The petitioner explained that its program is accessible to the public as required by 8 C.F.R. § 214.2(q)(3)(A) because it will take place at hotels. The director did not request further evidence regarding this requirement, and presumably found that the petitioner's program satisfies the regulatory criterion. The AAO disagrees.

The petitioner has not established that the American public, or a segment of the public sharing a common cultural interest, would be exposed to aspects of a foreign culture as part of a structured program. While the three hotels that will receive the beneficiaries are certainly accessible to the American public, the record suggests that the scope of any cultural activities undertaken by program participants would only occasionally reach beyond informal and unstructured interactions between servers and restaurant patrons. As discussed further below, many of the beneficiaries would be assigned to roles that traditionally have little or no interaction with customers, such as prep cooks, cooks, bussers and bar porters.

Although requested by the director, the petitioner has declined to indicate with any specificity how much time the participants devote to their roles as cooks and servers compared to the amount of time they engage in any other daily, weekly and monthly cultural activities that may be accessible to a broader portion of the hotel population as part of a structured program. Simply stating that the beneficiaries devote 100 percent of their time to cultural interaction with guests is insufficient when much of this time may be spent performing typical restaurant service duties, and when more than half of the beneficiaries may be working in positions that remove them from interaction with the public. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Overall, based on the evidence of record, the AAO cannot find that the petitioner's program fully complies with the public accessibility requirement set forth at 8 C.F.R. § 214.2(q)(3)(A), due to the lack of structured cultural activities.

(B) *Work and Cultural Components*

The AAO concurs with the director that the primary purpose of the petitioner's international exchange program is to staff hotels with food and beverage department workers, rather than to provide a cultural exchange program. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the international cultural exchange visitor's country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B).

This conclusion should not, however, be construed as a finding that the petitioner or the host properties entered in their agreements and filed the petition with any intent to abuse the Q-1 visa program or to otherwise circumvent U.S. immigration laws. Rather, it is evident that the petitioner is obligated under its contract with host hotels to

provide staffing and typically uses the H-2B and J-1 visa programs in order to obtain employment authorization for its workers. The petitioner's services agreement with Hilton Hotels Corporation specifically states that the petitioner "agrees to provide labor services through the H-2B Visa Program to the Hilton New Orleans Riverside." The record shows that the petitioner recently had an H-2B petition denied and sought a viable alternative for bringing foreign hotel workers, normally granted H-2B or J-1 status, to its clients' hotels for the upcoming tourist season in New Orleans. However, the petitioner's proposed international cultural exchange program as currently structured simply fails to meet the requirements for Q-1 classification as set forth in the statute and regulations.

While the statute and regulations do not require the program to be purely cultural, the regulation specifies that the program's cultural component must be wholly designed to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the exchange visitors' country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). The evidence does not demonstrate that the petitioner's cultural component is wholly designed to exhibit or explain any of these aspects of the cultures of the approximately 12 countries represented by the beneficiaries included in this petition.

For example, the petitioner initially stated that the beneficiaries will directly interact with hotel and restaurant guests in the course of performing the normal duties of their positions and "participate in different international events which are often held in New Orleans where they can share their culture." The program as originally described included no structured activities sponsored or administered by the petitioning company and appeared to consist of unspecified and informal cultural interactions between the beneficiaries and the hotel guests. In response to the RFE, the petitioner added the calendar of bi-weekly cultural events to take place during the course of the program. While these could be considered structured activities, they would occur infrequently, with two of the three host properties having only two events scheduled over an eight-month period.

On appeal, the petitioner states for the first time that the beneficiaries will wear name tags identifying their home country, and deliver cultural presentations in native costumes. However, the petitioner offers no further explanation regarding these "cultural presentations" or how frequently they would occur, and neglects to explain why these activities were not mentioned in its earlier submissions. The petitioner had ample opportunity to describe its cultural exchange program prior to the adjudication of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Merely identifying the participants to hotel guests as foreign nationals using name tags does not equate to a structured cultural exchange program. This type of interaction scarcely qualifies as "cultural exchange" and is clearly secondary to the employment.

While the 13 events listed on the petitioner's calendar may provide more meaningful opportunities for cultural exchange than a typical dinner service, it does not appear that all participants would be involved in these interactions even on a once-monthly basis, much less as the essential component of their day-to-day employment. As noted above, there are only two events scheduled for the Westin and Monteleone hotels during the course of the requested period of employment.

Overall, the petitioner's program is structured in such a way that the only *bona fide* cultural programs and activities, such as the International Friendship Party and international culinary exchange events would (1) account for a very small portion of the participants' time; and (2) occur outside of the participants' primary responsibility of preparing and serving food. Again, the AAO is not persuaded that such elements as wearing a name tag identifying a person's country of origin offering a few facts or answering a few questions about one's country during the course of taking a food order, seating restaurant guests or bussing a table will result in any structured or meaningful exhibition or explanation of the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. Any other cultural activities appear to be ancillary to the participants' essential role as restaurant workers and would occur outside of their primary employment responsibilities. Finally, the petitioner has not established how kitchen employees, including the cooks and pre-cooks, and the bar porters, would have any interaction with guests, as such positions do not typically involve direct service to customers.

The presence of the foreign employees may contribute to some guests' overall experience at the participating host properties. However, the fact remains that the participants will be spending the majority of their time on a daily basis performing normal restaurant duties, during which periods their cultural interaction with hotel guests is necessarily limited to unstructured and informal cultural exchanges. The petitioner's service contracts with the three host hotels make it clear that the primary, or even sole, purpose of the agreement is for the petitioner to provide labor in specific areas, not to provide the hotel's guests with a cultural exchange program. The AAO assumes, and it has not been shown otherwise, that the Q-1 restaurant workers would be required to perform the same duties as any other restaurant workers placed at the participating properties, which would limit the amount of time that could be devoted to cultural sharing.

Based on the foregoing discussion, it must be concluded 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) because the petitioner failed to establish that the beneficiaries would be engaged in employment or training of which the *essential element* is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the aliens' countries of nationality. Accordingly, the appeal will be dismissed.

## **B. Qualified Employer**

The second issue to be addressed is whether the petitioner is a qualified employer pursuant to 8 C.F.R. § 214.2(q)(4)(i). Specifically, the director found that the record did not establish that the beneficiaries would be employed by the petitioner, but rather suggested that the beneficiaries would be employed by three different hotel establishments.

On appeal, the petitioner emphasizes that it provided documentary evidence establishing that it "is solely responsible and liable for performance of all duties, obligations and responsibilities as an employer of individuals hired or retained by [the company] including but not limited to recruitment, interviewing, hiring, payment of wages and supervision." The petitioner re-submits its service agreements with the Hilton New Orleans Riverside, Monteleone Hotel, and Westin New Orleans Canal Place Hotel. The AAO notes that the

record also contains evidence of wages paid by the petitioner to its employees assigned to these hotels, along with invoices issued by the petitioner for work performed by its employees.

Upon review, the petitioner has established that it is a "qualified employer" for the purposes of this visa classification, as required by 8 C.F.R. §§ 214.2(q)(1)(iii) and (q)(4).

The AAO agrees with the director that the regulations governing Q-1 petitions do not contemplate a scenario in which the petitioner and the employer are not the same entity. The regulations specifically require evidence that *the petitioner* will offer the aliens wages and working conditions comparable to those provided to domestic workers and that it have the financial ability to do so. *See* 8 C.F.R. § (q)(4)(i)(D) Based on these requirements, it is clear that the regulations require that a "qualified employer" for Q-1 purposes must pay the beneficiaries their wages.

The evidence submitted is sufficient to establish that the beneficiaries will be employed by the petitioner and not by the host hotel properties. The petitioner is responsible for recruiting, selection, paying wages, and providing benefits to the Q-1 participants and maintains their employment and tax records. The petitioner is actively doing business and has the ability to pay the beneficiaries the appropriate wages. Accordingly, the AAO will withdraw the director's finding that petitioner is not a "qualified employer" based on the assignment of Q-1 participants to different worksites.

However, as discussed above, the appeal will be dismissed based on the petitioner's failure to establish that it administers a cultural exchange program in accordance with the regulatory requirements at 8 C.F.R. 214.2(q)(3)(iii).

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.