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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

[redacted]

D10

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 13 [redacted]

IN RE: Petitioner:
Beneficiaries: [redacted]

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 $630. 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, initially approved the nonimmigrant visa petition. The director subsequently revoked the approval of the petition on notice pursuant to 8 C.F.R. § 214.2(q)(9)(iii)(D). The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 "cultural exchange and training" company and claims to operate a cultural exchange program called "Passport to Culture." It seeks to employ the 101 beneficiaries temporarily in the United States in the position of "Cultural Representative/Guest Service" for a period of approximately five months. The beneficiaries are citizens of Australia, Bulgaria, United Kingdom, Romania, France, Bulgaria, Denmark, Sweden, Argentina, Czech Republic, Slovenia, Romania, New Zealand, Canada, Italy, Chile, Austria, Slovakia, Sweden, Germany, Japan, Spain, and Peru. The beneficiaries will be assigned to work as ski instructors at resorts located in Colorado.

The director approved the nonimmigrant petition on September 9, 2008. On December 19, 2008, the director issued a Notice of Intent to Revoke, after the petition was returned for review by the U.S. Department of State due to questions raised regarding the beneficiaries' eligibility during the visa interview process. The director advised the petitioner that it had come to the attention of U.S. Citizenship and Immigration Services (USCIS) that the approval of the petition was contrary to the requirements of the Q-1 regulations. The director expressed a concern that the purpose of the petitioner's Q-1 international cultural exchange program is to provide workers, normally granted H-2B status, to the hospitality and hotel sector in order to fill a labor shortage. The director advised that ten petitions filed between August 15, 2007 and September 15, 2008, involving 755 workers, were under review. The petitioner was granted thirty-three (33) days in which to submit additional evidence in rebuttal to the proposed grounds for revocation, and submitted a timely response.

On March 9, 2009, after reviewing the petitioner's response to the notice of intent to revoke, the director revoked approval of the petition based on the petitioner's failure to demonstrate: (1) that it is a qualified employer pursuant to 8 C.F.R. § 214.2(q)(4)(i); and (2) 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. 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 petitioner: (1) did not designate a qualified employee to administer the petitioner's program's at the receiving host properties; (2) did not establish that it will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed in Colorado; and (3) did not establish who will actually employ the beneficiaries and pay their wages.

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 has relied upon a settlement agreement made between USCIS and the petitioning company on May 24, 2007 in the United States District Court of South Carolina, and alleges that all defects found by the director in the instant matter were

previously resolved in the settlement (*National Collegiate Recreation Services d/b/a American Hospitality Academy v. Chertoff, et al*, Civil No. 9:05-CV-3011-PMD). The petitioner asserts that it is a qualified employer operating a program which satisfies all Q-1 regulatory requirements, and alleges that USCIS "intend[s] to hold [the petitioner] to a higher standard for adjudicating its Q visa petitions than any other companies who applies [*sic*] for Q visa status and the previous settlement agreement concerning the identical issues."

Upon initial review of the record, the AAO issued a request for additional evidence pursuant to 8 C.F.R. § 103.2(b)(8), on October 19, 2009. The AAO's request for evidence was limited to the issue of whether the petitioner is a qualified employer pursuant to 8 C.F.R. § 214.2(q)(4)(i). The petitioner submitted a timely response to the AAO's request on November 18, 2009.[1]

Upon review, the AAO concludes that the director properly revoked the approval of the petition pursuant to the regulation at 8 C.F.R. § 214.2(q)(9)(iii)(D).

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

[1] The AAO concurrently issued requests for evidence in this and several related Q-1 petitions filed by the petitioner. The petitioner submitted a single response in relation to this RFE and those issued in three of the related Q-1 petitions (EAC 08 237 52518, EAC 08 237 52643, and EAC 08 238 51037). We note that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). If USCIS requests additional evidence that the petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the records of related nonimmigrant proceedings are not combined.

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).

Finally, the regulation at 8 C.F.R. § 214.2(q)(9)(iii) provides in pertinent part that the service center director shall send the petitioner a notice of intent to revoke an approved Q-1 classification petition if he or she finds that:

(A) The international cultural exchange visitor is no longer employed by the petitioner in the capacity specified in the petition; or if the international cultural exchange visitor is no longer receiving training as specified in the petition;

(B) The statement of facts contained in the petition was not true and correct;

(C) The petitioner violated the terms and conditions of the approved petition; or

(D) The Service approved the petition in error.

II. Prior Approvals and Settlement Agreement

On appeal, the petitioner seeks to rely on its prior Q-1 petition approvals and a settlement agreement made between USICIS and the petitioner in May 2007. Specifically, the petitioner states:

> The UCIS [*sic*] agreed in United States District Court of South Carolina on May 24th, 2007 (Civil No. 9:05-CV-3011-PMD) that [the petitioner's] program satisfied all regulatory requirements governing the Q visa regulatory requirements of 8 C.F.R. 214.2(q)(3)(iii). . . .
>
> USCIS Notices of Intent to Revoke the approved visa petitions alleged the same grounds which were resolved by settlement in Civil No. 9:05-3011-PMD that [the petitioner] failed to establish that it has an international cultural exchange program which satisfies the components prescribed by the Q visa regulations.

Under the terms of the negotiated settlement agreement, the petitioner agreed to dismiss a lawsuit it filed on October 21, 2005. USCIS acknowledged that it approved three Form I-129, Q classification petitions filed by the

petitioner while the lawsuit was pending, and that "based on the evidence submitted in support of those petitions, that the petitions satisfied all the regulatory requirements governing Q visa status pursuant to 8 C.F.R. 214.2(q)(3)(iii)." The approved petitions acknowledged in the settlement agreement were approved on March 12, 2007; , approved on November 6, 2006; and approved on June 16, 2006.

Paragraph six of the settlement agreement states:

> Plaintiff acknowledges that the subsequent approval of the petitions listed above is not binding on USCIS with respect to any subsequent petitions filed by the Plaintiff or any unadjudicated petitions pending with USCIS. Nor does this agreement relieve the Plaintiff of its burden of establishing a cultural exchange program with respect to future petitions as provided by the relevant regulations.

The instant petition is a new Q-1 petition filed on September 5, 2008, and is not one of the three petitions covered by the settlement agreement. Pursuant to paragraph six of the agreement, the agreement was not binding on USCIS in the adjudication of the instant petition. The director did not violate the terms of the settlement agreement when he revoked the approval of the instant petition.

The AAO acknowledges that USCIS previously approved many Q-1 nonimmigrant petitions filed by the petitioner. The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference.

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 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 will be discussed, the petitioner's initial filing in this matter was missing key relevant information needed to determine whether all the elements of eligibility for Q-1 classification were established. Accordingly, it follows that the approval of this petition based on the evidence submitted was in error. The petitioner indicates that its previous petitions have nevertheless been approved based on the same evidence. USCIS records confirm that most or all of the petitioner's prior Q petitions were favorably adjudicated with no requests for additional evidence. If the petitioner routinely submits the same initial evidence in support of its Q petitions, then it is likely that many prior petitions were also approved without sufficient evidence of eligibility in the record. Such approvals would constitute material and gross error on the part of the director.

Neither the director nor the AAO is 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).

III. Issues on Appeal

The two issues before the AAO on appeal are: (1) whether the petitioner is a "qualified employer" pursuant to the eligibility requirements set forth at 8 C.F.R. § 214.2(q)(4)(i); and (2) 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).

A. Qualified Employer

The first 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 petitioner: (1) did not designate a qualified employee to administer the petitioner's programs at the receiving host properties; (2) did not submit appropriate evidence that it will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed in Colorado; and (3) did not establish who will actually employ the beneficiaries and pay their wages.

Procedural History

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiaries will serve in the position of "Cultural Representative/Guest Service," and receive wages of $350.00 per week. Where asked to indicate on Form I-129 the address where the beneficiaries would work, the petitioner stated: "see attached." The only attachment provided was a list of 26 "Participating Resorts and Host Properties" located in South Carolina, Florida, Colorado and Vermont. The petitioner did not indicate which specific property or properties would be receiving the 101 beneficiaries included in the petition. The petitioner also did not state what type of work the beneficiaries would be doing beyond performing "guest service and/or instructor assignments." The petitioner stated in its letter dated September 2, 2008 that the beneficiaries "will receive compensation as similarly employed individuals."

The petitioner indicated on Form I-129 that it has 20 employees, and reported its gross and net annual income as $2,500,000 and $125,000, respectively.

The director initially approved the petition on September 9, 2008 without requesting additional evidence to establish that the petitioner is a qualified employer pursuant to the eligibility requirements at 8 C.F.R. § 214.2(q)(4)(i).

On December 19, 2008, the director issued a notice of intent to revoke, in which the director requested that the petitioner provide: the location of each beneficiaries' proposed employment; job titles and occupational duties for each beneficiary; copies of the petitioner's contracts with host properties; certification in the form of a statement that the beneficiaries will receive wages and working conditions comparable to those afforded domestic workers similarly employed in the geographical area of the beneficiaries' employment; and

documentation from the state labor office of the prevailing wage for each location where occupations represented on the Form I-129 petition will be performed.

The director further emphasized that, pursuant to 8 C.F.R. § 214.2(q)(11), the beneficiaries may only be employed by the "qualified employer" through which the alien attained Q-1 nonimmigrant status. Specifically, the director stated:

> Although your business is the Q1 petitioner and sponsor for immigration purposes, the engaging employer is the employer that receives the beneficiary in order for the beneficiary to fill a labor shortage. It is unclear whether your organization or the host employer will pay the Q1 salaries. . . . The record of evidence does not establish the petitioner's day-to-day supervision, control, involvement or oversight as an employer. There are no provisions in the Q1 regulations allowing for the sponsoring employer to place the Q1 beneficiary with another employer to perform work for the other employer. The record does not establish that the Q1 beneficiaries in this petition will be employed only by you, the petitioner.

In a response dated January 14, 2009, the petitioner stated that it did in fact certify in its initial letter of support that "Q1 beneficiaries would receive the same compensation as those similarly employed." The petitioner further stated:

> [The petitioner] certifies that the occupations covered by [the petitioner's] petition will be afforded wages and working conditions comparable to those accorded domestic workers similarly employed. [The petitioner] is able to certify this by comparing the wages and working conditions of workers at the same hotel or resort working in a similar position as [the petitioner's] participants. Full time hours are recognized as 30 or more hours per week. [The petitioner] requires each host property provide such information and to abide by such requirements.

In response to the director's request for prevailing wage information pertaining to the beneficiaries' occupations and locations of employment, the petitioner indicated that it was not able to obtain prevailing wage information from State labor departments in Colorado.

The petitioner stated that it will serve as the employer for all participants and that Q-1 participants are prohibited from holding a second job. The petitioner further indicated:

> [The petitioner] maintains an employer/employee and/or trainer/trainee relationship. [The petitioner's] director of recruitment and/or [the petitioner's] designated host site coordinator recruits, interviews and/or selects participants. [The petitioner] provides training, maintains participant files, generates and issues program manuals and handbooks (rules and regulations) and assigns essential job descriptions and duties in order to achieve the objectives of the international cultural exchange program. . . .

The petitioner further stated that it is responsible for providing participants with an itinerary of cultural activities, ongoing professional development seminars, support, communication, coaching and counseling, as

well as monitoring performance, and maintaining the right to terminate participants who fail to follow cultural exchange program requirements.

The petitioner indicated that all 101 beneficiaries would be participating in the program as ski instructors assigned to ski resorts located in Colorado. The petitioner also provided a copy of the Host Property Agreement with the owner of the three resorts, which outlines the petitioner's "Passport to Culture" program and stipulates that the petitioner is responsible for administering the program. Exhibit D of the agreements designate the petitioner's president as the person responsible for administering the Q-1 program and acting as liaison with USCIS. The same exhibit also identifies a "Designated On-Site Coordinator" who "provides on site daily supervision of the Cultural Ambassador and manages the implementation of the Passport to Culture Program" and who "provides monitoring reports and documents to [the petitioner's] program director."

The director revoked the approval of the petition on March 9, 2009, concluding that the petitioner had not established that it can be considered a qualified employer for purposes of this visa classification. This conclusion was based on: (1) the petitioner's failure to establish that it has designated a qualified employee to administer the petitioner's program at the host properties; (2) the petitioner's failure to submit corroborating evidence that it will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed in Colorado; and (3) the petitioner's failure to establish who will actually employ the beneficiaries and pay their wages. The director concluded that the evidence of record failed to meet the evidentiary requirements for qualified employers set forth at 8 C.F.R. §§ 214.2(q)(4)(i)(B), (D) and (E).

On appeal, the petitioner states that it did in fact clearly identify designated representatives for each host property as requested. In addition, the petitioner asserts that the director only requested "a certification in a form of a statement addressing that the occupations will be afforded wages and working conditions comparable to those accorded domestic workers similarly employed." The petitioner asserts that it provided the requested certification in the form of a statement and emphasizes that no corroborating documentation was requested.

Upon review of the petitioner's statements on appeal and the record of proceeding in its entirety, the AAO found these issues to be unresolved. The AAO issued a request for additional evidence on October 19, 2009 in order to allow the petitioner to submit additional evidence and/or explanation to establish that it meets all regulatory requirements as a Q-1 qualified employer set forth at 8 C.F.R. § 214.2(q)(4)(i).

Specifically, the AAO noted that the host property agreements submitted do little more than describe the petitioner's "Passport to Culture" program and do not include terms relating to details such as the number of participants to be received at each property, their intended assignments, their wages and working conditions, or the compensation to be paid to the petitioner in exchange for organizing and operating the program at the properties, if applicable. The AAO further noted that portions of the agreements were signed months after the petition was filed. Thus the AAO requested complete copies of all agreements between the petitioner and the host properties and clarification as to when such agreements were finalized.

The AAO further requested that the petitioner clarify who serves as the beneficiaries' employer and explain the role of its designated on-site coordinators in the day-to-day administration of the program, supported by

documentation such as performance evaluations, logs or monitoring reports prepared by the host property on-site coordinators. The AAO asked that the petitioner explain whether the beneficiaries are subject to the supervision of the host properties' staffing while carrying out their duties as ski instructors, and to describe the scope and type of supervision provided.

With respect to the beneficiaries' wages and working conditions, the AAO noted that the total wages to be paid to all beneficiaries during the requested period of Q-1 classification would be in excess of $900,000. The AAO acknowledged the petitioner's assertion that it provided the certification regarding wages required by the regulations, but noted that the regulation at 8 C.F.R. § 214.2(q)(4)(i)(D) requires the petitioner to submit "appropriate evidence" that it will offer the Q-1 participants wages and working conditions comparable to those of domestic workers.

Therefore, the AAO requested that the petitioner: (1) identify who is paying the Q-1 program participants the proffered wages of $350 per week; (2) provide documentary evidence of wages paid to Q-1 beneficiaries admitted to the United States under the petition prior to the revocation of the approval; (3) provide documentary evidence of wages paid to domestic workers employed as ski instructors at the host properties during the 2008/2009 ski season; (4) provide a copy of the petitioner's 2008 IRS Form 1120, U.S. Corporation Income Tax Return with all attachments as evidence of the petitioner's financial ability to remunerate the 101 beneficiaries; and (5) if applicable, provide documentation demonstrating that the host properties remunerate the petitioner for the beneficiaries' services.

In response to the AAO's request, the petitioner explains that it had agreements in place with the host properties well before the visa petition was filed, but that it revised its agreements based on instructions included in the directors' Notice of Intent to Revoke. The petitioner submits copies of its original agreements with the host properties.

The petitioner clarifies that the designated on-site coordinators are employees of the host properties and are typically members of the host properties' human resources management teams. The petitioner indicates that the beneficiaries would be managed on a day-to-day basis by the host properties' ski instructor supervisors, and that host property supervisors and managers are trained to manage the petitioner's cultural exchange program. The petitioner further states that 80 to 100% of the supervisor's time "would be spent insuring job descriptions are being followed and the cultural program is in place." The petitioner claims that the on-site coordinator communicates with the petitioner weekly to recap the program and is required to submit monthly monitoring reports.

With respect to the beneficiaries' wages and working conditions, the petitioner states:

> The host properties of [the petitioner] pay the Q-1 program participants, they are not paid by [the petitioner]. Please know, although [the petitioner] does not pay the beneficiaries, it has always been our understanding we qualify as the employer under the Q-1 regulations. There is nothing in the Service's regulations that precludes a Cultural Exchange Company from filing a Q-1 petition for an alien as long as the Cultural Exchange Company meets the definition of a United States Employer.

The petitioner relies on the definition of "qualified employer" at 8 C.F.R. § 214.2(q)(1)(iii) in support of this claim. The petitioner also refers to two legacy Immigration and Naturalization Service (INS) letters, and claims that these opinions "support co-employment relationships."

The petitioner indicates that it requires prospective host properties to provide information regarding wages and working conditions as part of the application process, and that it accepts host properties only after a careful due diligence and vetting process. The petitioner states that it is not able to provide evidence of wages paid to domestic workers, as the host properties will not release such information due to privacy concerns.

The petitioner submits a "Host Property Profile" for the company intending to host the instant beneficiaries at its properties. The host property identifies the positions available and the rate of pay offered. The record also includes a one-page Host Property Agreement, Obligations and Responsibilities statement. The AAO notes that several of these agreements were signed or approved subsequent to the filing of the instant petition. The petitioner also submits a host property agreement with Vail Resorts dated September 19, 2008, under which Vail Resorts "agrees to pay [the petitioner] a Program Fee of $500 per ski instructor participant in the Passport to Culture Program."

Analysis

Upon review, the petitioner has not 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).

Although the director's determination will be affirmed, the AAO notes that the petitioner has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with USCIS, pursuant to 8 C.F.R. § 214.2(q)(4)(i)(B). The director's finding to the contrary will be withdrawn. The requirement that the petitioner designate employees to administer the program at each host property is beyond the scope of the regulatory requirements. Nevertheless, the petitioner has also established that it has designated a manager at each host property to oversee the cultural exchange program.

The AAO finds that the petitioner's heavy reliance on the regulatory definition of "qualified employer" at 8 C.F.R. § 214.2(q)(1)(iii) is misplaced. While the petitioner is a U.S. corporation that administers an international cultural exchange program, the petitioner must also submit "appropriate evidence" that it will offer the aliens wages and working conditions comparable to those accorded local domestic workers similarly employed, and evidence that it has the financial ability to remunerate the participants. 8 C.F.R. §§ 214.2(q)(4)(i)(D) and (E).

Here, the AAO specifically requested evidence of wages paid to the Q-1 beneficiaries admitted under this petition and a copy of the petitioner's latest corporate tax return as evidence of its ability to remunerate the beneficiaries. The petitioner failed to submit the requested evidence in its response. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner concedes that it does not pay wages to the beneficiaries, nor has it demonstrated that it has the financial ability to do so.

The regulations governing Q-1 petitions do not contemplate a scenario in which the petitioner and the employer are not the same entity. The regulation at 8 C.F.R. § 214.2(q)(11)(i) provides:

> An alien classified under section 101(a)(15)(Q)(i) of the Act may be employed only by the qualified employer through which the alien attained Q-1 nonimmigrant status. . . . Employment outside the specific program violates the terms of the alien's Q-1 nonimmigrant status within the meaning of section 237(a)(1)(C)(i) of the Act.

The petitioner considers all of the beneficiaries included in the petition to be "employed" within its specific program, but the fact remains that the beneficiaries are actually employed by the host properties and not by the petitioner. Based on the evidence of record, the host property is involved in recruiting, selection, day-to-day supervision, work scheduling and assignments, paying wages, and providing benefits to the Q-1 participants, and has a specific need for their services as ski instructors. It appears that the host property also maintains all employment and tax records for the beneficiaries, as the petitioner was not able to produce this documentation upon request. The petitioner may seek assurances from the host properties that the beneficiaries will receive the appropriate wages; however, 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 has 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 petitioner also erroneously relies on its long-held "understanding" that it qualifies as an employer under Q-1 regulations. The AAO has acknowledged the petitioner's prior Q-1 petition approvals. However, if all of the prior petitions were submitted with initial evidence similar to what was submitted in this matter, USCIS may have erroneously assumed that the petitioner was in fact paying the beneficiaries' wages and that it has the financial ability to do so. As discussed above, USCIS has approved most or all of the petitioner's prior petitions without requesting any additional evidence of eligibility beyond the initial filing. The petitioner failed to respond to the director's specific request to indicate who pays the beneficiary's wages and only confirmed that it does not pay wages to the beneficiaries when it responded to the AAO's request for evidence. Again, 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). As stated above, despite any number of previously approved petitions, USCIS does 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.

The AAO further acknowledges the petitioner's reference to two letters issued by legacy Immigration and Naturalization Service (INS) which, according to the petitioner, "support co-employment relationships." *See* Letter from [redacted] attorney (Feb. 5, 1996)(*reproduced in* 73 No. 11 *Interpreter Releases* 333 (March 18, 1996.)); Letter fro[redacted], attorney (Dec. 20, 2000)(reproduced in 78 No. 27 *Interpreter Releases* 1172 (July 16, 2001)).

esponded to an inquiry as to which company should file an H-1B petition in an employee leasing arrangement in which two employers exercise a degree of control over the same alien worker. Ms. noted that "the Service does not recognize the concept of 'co-employer,' and advised that an alien with two employers would require separate petitions, or one employer would have to designate itself as the petitioner for immigration purposes. She further noted that "the Service is unwilling to designate a particular company as the petitioner" in such a situation, and that "the decision as to who the employer is in a given situation is made by the entities involved in the employment agreement."

answered an inquiry involving an H-1B petitioner that hired a professional employment organization (PEO) to handle its administrative matters such as payroll and health insurance in exchange for a service fee. He advised that "based on the regulatory definition of a 'United States Employer' it is clear that an entity can file an H-1B petition on behalf of an alien even though the alien's salary is paid from another source, provided that an employer-employee relationship exists."

First, the petitioner's reliance on opinion letters pertaining to H-1B nonimmigrants is misplaced. Petitions for H-1B temporary workers are governed by the definition of "United States employer" found at 8 C.F.R. § 214.2(h)(4)(ii), while petitions for Q-1 international cultural exchange visitors are governed by the definition of "Qualified employer" pursuant to 8 C.F.R. § 214.2(q)(1)(iii) and the evidentiary criteria for establishing eligibility as a qualified employer set forth at 8 C.F.R. § 214.2(q)(4)(i). The petitioner has not established any basis to support a conclusion that USCIS or legacy INS interpretations of the term "United States employer" in the H-1B context are applicable to the Q-1 nonimmigrant classification.

Second, letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letters may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

The AAO does not doubt that the petitioner designed the cultural program, provides the beneficiaries with training and materials related to the cultural program, requires the host properties to report on the progress of the overall program, and requires the host property to complete a brief, individual performance evaluation for each beneficiary at the end of the program. However, the petitioner has not established how these conditions establish the company's eligibility as a "qualified employer" in light of the fact that the beneficiaries are paid, supervised, and in some cases, recruited and selected, by the host property. In fact, the petitioner states that it requires some existing employees of the host properties to undergo training, to be familiar with the same cultural materials, and to devote the majority of their time to the day-to-day supervision of the cultural program. There is no indication that such staff are considered "employees" of the petitioner based on their day-to-day involvement with the administration of the petitioner's cultural program, although there is little difference between their roles and the roles of the foreign program participants.

In sum, the fact that the petitioner is a U.S. corporation that administers a cultural program is not sufficient to establish that it is a "qualified employer" for purposes of this nonimmigrant visa classification. The petitioner has not satisfied the evidentiary requirements for qualified employers set forth at 8 C.F.R. §§

214.2(q)(4)(i)(D) and (E). Accordingly, the AAO finds that petition was clearly approved in error and the director properly revoked the approval. The appeal will be dismissed.

B. The Petitioner's Proposed Cultural Exchange Program

The second 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 Passport to Culture Program

As noted above, the petitioner initially indicated that all 101 beneficiaries included in the petition will serve in the position of "Cultural Representative/Guest Service." After the director's Notice of Intent to Revoke, the petitioner revealed that the beneficiaries will be working as ski instructors.

In a letter submitted in support of the petition, the petitioner provided the following introduction to its cultural exchange program:

> [The petitioner] operates a structured program of cultural exchange. The Passport to Culture is a structured cultural exchange program that celebrates diversity while providing guests the incredible journey of cultural sharing. Participating resorts, hotels, hospitality companies and community organizations contract [the petitioner] to design, implement and provide support the *Passport to Culture* program for their guests and employees.
>
> The hospitality industry presents an ideal forum for international understanding as it breaks down barriers by hosting different cultures together in an environment that promotes peace and friendships. The *Passport to Culture* program provides daily, weekly and monthly activities that emphasize and encourage cross cultural learning. . . .
>
> * * *
>
> [The petitioner's] structured cultural exchange program provides practical training, employment and the sharing of history, culture and traditions of the country of the alien's nationality, in accordance with 8 USC 1191(a)(15)(Q)[*sic*]. It is designed to exhibit and explain the attitude, customs, history, heritage, philosophy and traditions of the cultural representatives' country of nationality. Participating hotels and resorts serve as the vehicle to achieve the objectives of [the petitioner's] Cultural Exchange and program. Individuals from

> around the world have the opportunity to impart the awareness of their country's culture daily through their practical training.
>
> Individuals are selected based on their dedication to share their culture, history and traditions and their desire to learn about the hospitality industry.

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 "contracted hotels, resorts and within the local community." The petitioner stated that American and international tourists and the public have access to the hotels and resorts where its "Passport to Culture" program takes place.

The petitioner stated that the work component of its program "serves as the vehicle to achieve the cultural objective," and further described this component as follows:

> Through the practical training in a guest service area of their host property, cultural exchange visitors will be imparting their culture, history and traditions. The work component is integral to implementing the *Passport to Culture* Program. Host properties of [the petitioner] adopt the *Passport to Culture* Program as their shared commitment to promoting diversity excellence and cultural understanding in the hospitality industry. This cultural exchange program was created to foster a spirit of tolerance, respect and understanding among all races and cultures. The best way to provide an exchange of knowledge and customs is to interact on a daily basis with the American and International tourists, and team members. This daily interaction is the main purpose of the work component. Daily interaction derives through the work as food and beverage attendant, retail attendant, activities attendant, and/or guest service attendant. Cultural Representatives introduce themselves to the American and International Tourists as a representative of their country. During the guest service interaction, cultural representatives share information about their culture, history and traditions. This is done primarily through communication as well as the daily structured Passport to Culture activities.

Finally, the petitioner addressed the cultural component of its "Passport to Culture" program, noting that the program provides "daily, weekly and monthly activities, events as well as workshops, classes and seminars," which encourage cross-cultural learning. The petitioner described the program's "cultural activities and events" as follows:

> The cultural activities and events of [the petitioner's] Passport to Culture program is designed to exhibit and explain the attitude, customs, history, heritage, philosophy and traditions of the international cultural exchange visitor's country of nationality. The Passport to Culture activities and events take guests and fellow team members on an incredible journey of cultural sharing. Cultural Representatives invites [*sic*] the American and International Tourists to "be guests" of their culture, heritage and traditions. The activities are brought to life by Globee, a curious, fun-loving bee who buzzes from country to country, wearing his heart on his wings and spreading friendship and goodwill.

Globee introduces young hotel guests to [the petitioner's] Cultural Representatives allowing them to travel the world without leaving the resort.

Globee has all kinds of adventures, finding out about different countries, languages, foods, dress, music, modes of transportation and ways of life. [The petitioner's] Cultural Representatives interact with younger guests through Discover the World with Globee, a children's cultural activity program.

Globee has no particular cultural, political or religious agenda. He is a "globally friendly" bee, providing young guests with an effective way of learning, helping them BEE respectful, BEE friendly and BEE appreciative of our similarities as well as our universal differences.

The petitioner further stated that all beneficiaries will be required to participate in "Passport to Culture," Professional Development and Cultural Understanding seminars. The petitioner stated that its classroom content and "SERVLEAD workbook" utilizes portions of the U.S. Department of State's "Peace Education electronic journal" and the Peace Corp's cross-cultural workbook, "Culture Matters."

The petitioner provided the following job description for the position of "Cultural Representative" in a "guest service position," noting that the essential functions of each beneficiary's daily responsibilities would include:

- Meet and greet guests by identifying and introducing themselves as Cultural Ambassadors of their country.
- Perform guest service and/or instructor assignments. During the assigned guest service interaction, engage the guest in information about the culture, history and traditions of their culture.
- Fully participate in the Passport to Culture activities, events, seminars engaging the guests and team members in aspects [of] the [Cultural Ambassador's] culture, to include:
    - BEE My Guest and Cultural Welcome
    - Passport Signature
    - Cultural Ambassador Business Cards
    - Cultural Spotlights
    - Professional Development and Cultural Awareness Seminars
    - Cultural Submission and Contest
    - Discover the World with Globee – Kids Check In
    - Cultural Instructions/Lessons
    - Cultural Activities and Events as outlined in the Culture Activities Schedule

The "Passport to Culture" activities were described in more detail in a separate attachment. The petitioner requires program participants to greet guests in their native language, to introduce themselves as representatives of their home countries, and to "engage the guest in facts about their culture," while providing guest services. Cultural representatives are also expected to provide each young hotel/resort guest with a "Junior World Traveler Passport," to sign the passport on behalf of their home country, and to present guests with "Cultural Ambassador Business Cards," identifying their names and home countries.

According to the program description, "cultural spotlights" are scheduled by host properties and consist of "spotlighting" a country in the employee break room. The country is spotlighted through decorations and serving a "cultural food and beverage" in the break room. Participating host properties may also approve ethnic food and beverage specials from the cultural representatives' native countries to be placed on their restaurants' menus, although this component does not appear to be required.

The petitioner's materials indicate that the beneficiaries' training will take place monthly in the form of "on line training seminars focusing on cultural awareness and professional development." On a quarterly basis, cultural representatives are required to participate in a "cultural submission contest" in which they "document the sharing of their culture." Finally, the program description requires that each young guest receive a "Discover the World with Globee welcome envelope" at check in, which includes a Junior World Traveler Passport, an activities page, coloring pages and a post card.

The petitioner submitted a "schedule of events and activities" for the months of November through April. On a daily basis, participants are required to greet guests in their native language, wear nametags identifying them as cultural ambassadors, and present cultural business cards, while inviting guests to ask questions about their native country and culture. Participants also display a world map, sign Junior World Traveler passports, and encourage young guests to complete the "Discover the World with Globee" activities.

Weekly and monthly activities include holiday celebrations, a weekly "international story hour" for three to six-year-old children, a children's international theme day, a weekly "international lunch time" for children, a twice-monthly "international lunch time" for adults, monthly cultural spotlights for internal guests to socialize with cultural representatives, monthly cultural celebrations, an "international race day" held each Thursday, and a "Thursday Night Light" ceremony highlighting a "nation of the week." The petitioner provided photographs of cultural presentations and events held at various participating host properties, and brief testimonials from former program participants. The petitioner also submitted its *Passport to Culture* training program, a 26-page pamphlet.

As noted above, the petition was initially approved on September 9, 2008, and the requested validity period of November 10, 2008 until April 10, 2009 was granted to all 101 beneficiaries.
In the notice of intent to revoke issued on December 19, 2008, the director advised the petitioner that it had come to the attention of USCIS that the petitioning organization "uses Q1 beneficiaries to staff resorts and hotels throughout the country that are in need of workers," and that the instant beneficiaries will be employed as ski or snowboard instructors. The director advised that, upon further review, it was determined that the petition was approved in error.

The director noted USCIS' concern that the program was implemented to provide workers normally granted H-2B status, to the hospitality sector to fill a labor shortage, particularly in light of the fact that the semi-annual H-2B cap for employment commencing on or after October 1, 2008 was reached on July 29, 2008, thereby limiting businesses from a supply of H-2B temporary workers for the winter season.

The director further noted that the approved petition was absent any information regarding the occupational duties the beneficiaries would perform or where the beneficiaries would be working. The director instructed the petitioner to indicate the occupational position to be held by each beneficiary and to indicate the

percentage of time each day that they will spend accomplishing the work (such as giving ski lessons), and the percentage of time they would spend each day performing or participating in cultural duties related to their country of nationality. The director further instructed the petitioner to clarify the name and address of the host property where each beneficiary will work.

The director also addressed whether the essential element of the employment would be the sharing of the culture of the aliens' countries of nationality, as required by 8 C.F.R. § 214.2(q)(3)(i). Specifically, the director stated:

> It would appear that the essential element of the employment is to fulfill a seasonal labor shortage while performing nominal cultural duties such as wearing a name tag, greeting guests in a native language, presenting cultural business cards, and answering questions about beneficiary's country. The record shows that there are four other daily activities sponsored, primarily for children; however, the record does not establish that every Q1 beneficiary participates in these daily activities or that these activities are attached to the work component. There are other weekly and monthly activities, but again, the record does not establish the amount of time each Q1 beneficiary is required to participate in weekly and monthly Passport to Culture activities or how these activities are attached to the work component.
>
> While the good will intent behind the Passport to Culture events might be a basis for non Q1 international cultural exchanges, the totality of the program, events and activities does not provide an employment opportunity of which the essential element is the sharing of the culture.

The director instructed the petitioner to respond to specific questions regarding the percentage of time the beneficiaries will spend performing occupational duties compared to the percentage of time spent on cultural duties, and asked the petitioner to explain how "Passport to Culture" activities such as holiday celebrations and international story hour would be incorporated into work duties such as providing ski lessons. The director requested that the petitioner identify the number of cultural activities available during a weeklong stay at the host properties and asked whether the host sites can document the level of participation of guests in cultural activities.

In addition, the director specifically addressed the issue of whether the proposed Q-1 employment is independent of the international cultural exchange and whether the work component serves as the vehicle to achieve the objectives of the cultural component. The director advised the petitioner as follows:

> Contrary to the regulatory intent, it appears that your international cultural exchange visitor program serves as the vehicle to achieve the work, rather than the work component serving as the vehicle to achieve the objectives of the cultural component. It appears that the work performed by the Q1 beneficiaries could be accomplished without the added cultural duties, with no impact to the host site's operations and no impact to the expectations of the American public.

To address these issues, the director requested that the petitioner provide a statement from each host site addressing whether the work and cultural activities would be independent of each other.

In a letter dated January 14, 2009, the petitioner expressed that it was "surprised, troubled and dismayed" that the petitioner is being viewed as a company that is simply fulfilling a short-term labor shortage. The petitioner emphasized that its entire business model has been based upon providing training and cultural exchange programs, and that such programs are not ancillary to its main business. The petitioner noted that although many beneficiaries included in the petition may have held an H-2B visa, after a thorough review, it was determined that they meet the qualifications to participate in the petitioner's "Passport to Culture" program "based on their dedication to share their culture, history and traditions and their desire to learn about the hospitality industry."

With respect to the beneficiaries' job titles and occupational duties, the petitioner stated that it did in fact provide the brief job description for each beneficiary as required by 8 C.F.R.§ 214.2(q)(4)(ii)(A). The petitioner emphasized that all Q-1 participants are referred to as "Cultural Ambassadors" and stated that the job description it provided at the time of filing specifically indicated that the beneficiaries would serve as "guest service/ski instructors." The petitioner stated that cultural ambassadors are always assigned to positions that involve extensive guest contact. The petitioner further noted that "USCIS clearly recognizes the work and training in the tourism and hospitality sector as meeting the regulations of the Q1 visa" and referred to the Q-1 programs operated by Walt Disney World and Six Flags amusement parks. The petitioner indicated that it includes ski instructors in its "cultural ambassador/guest service" role because of the one-on-one guest interaction involved in the position, and the ability to "truly impart aspects of their culture during guest service."

The petitioner provided a chart identifying the work location and "cultural ambassador position" of each beneficiary included in the petition. As noted above, the petitioner indicated that all 101 beneficiaries would be employed as ski instructors at Vail Resorts in Colorado. The petitioner submitted an updated position description indicating the percentage of time the beneficiaries will devote to various duties as follows:

- Meet and greet guests by identifying and introducing themselves as Cultural Ambassadors of their country. *Percent of Time – Occurs 100% during all guest interaction, each participant will actively engage guests in courteous conversation referencing cultural facts, customs and heritage, meeting the objective of delivering a cultural experience to the guest).*

- Perform guest service and/or instructor assignments. During the assigned guest service interaction, engage the guest in information about the culture, history and traditions of their culture. *Percentage of Time – Occurs 100% during guest service – the role of ski instructor acts as the vehicle to achieve the cultural component. . . .*

- Fully participate in the Passport to Culture activities, events and seminars engaging guests and team members in aspects [of] the CA culture.

The petitioner indicated that daily cultural requirements would include the "BEE My Guest and Cultural Welcome," passport signature, handing out cultural ambassador business cards, and "Discover the World with Globee" activities, while weekly activities would include cultural spotlights and other cultural activities and events. The petitioner indicated that cultural seminars and the cultural submission contest would occur monthly.

The petitioner further addressed whether the essential element of the beneficiaries' employment is the sharing of the cultures of their countries of nationality. The petitioner again emphasized that its cultural ambassadors are not placed at properties to ease labor shortages. The petitioner asserts that its cultural ambassadors "are a fraction of the overall staff of the resorts," and enhance guests' experience through the petitioner's structured cultural exchange program.

The petitioner disagreed with the director's classification of the beneficiaries' proposed cultural activities as "nominal duties," noting that "these are the exact duties that are required to have meaningful daily guest interaction and structured cultural exchange." The petitioner emphasizes that its mission is to provide "cultural programs that allow for natural daily conversation and not a staged monologue between our Q1 participants and the American Public."

The petitioner objected to the director's suggestion that the work at the host properties could be accomplished without the cultural component and with no impact on the operations of the host property or its guest expectations and experience. The petitioner states that its "Passport to Culture" program "adds value on the overall guest experience," noting that during an average week-long stay at a participating host property there are 5 daily scheduled events and three to five weekly scheduled events.

Finally, the petitioner provided job descriptions for Q-1 participants working for other employers, both amusement parks, and asserted that "USCIS clearly recognizes the work and training in the tourism and hospitality sector as meeting the regulations of the Q1 visa" through its approval of Q-1 programs for amusement parks.

The director revoked the approval of the petition on March 9, 2009, concluding that the petitioner did not establish that its international cultural exchange program satisfies all component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), particularly the cultural and work components.

The director found that the petitioner had not adequately established the percentage of time the participants would devote to specific program activities. The director acknowledged the petitioner's claim that 100 percent of each participant's time would be allocated to cultural immersion activities, but emphasized that guests attending a ski resort would expect to receive ski instruction, rather than immersion in a cultural program as contemplated by the petitioner's "Passport to Culture" program. The director was "not persuaded that the work component duties accomplish the cultural component objectives to the extent detailed in this record."

The director concluded that the participants' work as ski instructors is independent of the cultural component, and that the majority of the duties and responsibilities related to ski instruction. The director further found that the cultural duties of the participants "appear to be tangential to your primarily purpose of providing ski

instructors to the host properties," and that the essential element of the beneficiaries' employment is not to share culture.

The director noted that the fact that the petitioner can identify similarities between its program and those operated by other organizations with approved Q-1 programs "does not support a conclusion that the participants of this petition qualify for Q-1 status." The director noted that comparisons to other programs that are not part of the record are not relevant and that, based on the evidence submitted, the petitioner has not developed or provided a cultural exchange program as intended by the statute and regulations.

On appeal, the petitioner relies on the settlement agreement discussed above, and objects to the director's determination that the reliability of the submitted job description should be questioned. The petitioner asserts that "the evidence clearly establishes each cultural representative is required to greet each and every guest and introduce themselves as a Cultural Ambassador of their country and engage every guest in information about the culture, history and traditions of their culture during guest service." The petitioner notes that "failure to adhere to the job description results in coaching, counseling up to and including termination."

The petitioner further emphasizes that the evidence submitted "clearly establishes that [the petitioning organization's] *Passport to Culture* program is designed to foster cultural exchange," that the program was designed on the whole to have the purpose of providing practical training, employment and the sharing of the history, culture and traditions of the country of our participants' nationality," that the program includes "structured activities with specific culture sharing goals," and that "the cultural exchange visitor's employment or training serves the objectives of the Passport to Culture Program."

Upon review of the appeal, the AAO requested additional evidence related to the petitioner's eligibility as a "qualified employer." However, some of the evidence submitted in response to the RFE is relevant to this issue. Specifically, the petitioner has submitted host property profiles, proposed cultural activities specific to each host property, individual performance evaluations for program participants, and monthly host-property reports submitted to the petitioner's headquarters. The AAO has reviewed the totality of the evidence submitted in reaching its determination and will discuss this evidence further below.

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 "contracted hotels, resorts and within the local community." It emphasized that American and international tourists and the public have access to the hotels and resorts where its "Passport to Culture" program takes place. 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. The majority of the cultural activities undertaken by the program participants as ski instructors are realistically only available to guests who opt to purchase private ski lessons and who happen to be assigned an instructor who is participating in the program. Specifically, the daily activities which comprise the main component of the program would be limited to interactions that occur during individual or small-group ski lessons. Based on a review of the performance evaluations submitted in response to the RFE, some of the beneficiary ski instructors engaged in cultural interactions with as few as 100 resort guests over a four-month period. While the participating host properties are certainly accessible to the American public, private ski lessons involving one-on-one or small group instruction are not publicly accessible activities or events. Overall, the record suggests that the scope of any cultural activities undertaken by program participants only occasionally reaches beyond informal and unstructured interactions between private instructors and students.

Although requested by the director, the petitioner has declined to indicate with any specificity how much time the participants devote to their roles as ski instructors compared to the amount of time they engage in other daily, weekly and monthly cultural activities that may be accessible to a broader portion of the resort 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 providing private ski lessons in which the participant is primarily focused on teaching skiing techniques to individual students or small groups of guests

who paid for this specific service with no expectation of exposure to aspects of a foreign culture. 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)). The petitioner has not indicated that the host properties provide their ski school customers a choice between regular ski instructors and "cultural ambassadors," so the AAO cannot find that the petitioner's daily activities are accessible to "a segment of the public sharing a common cultural interest."

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).

(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 ski resorts with ski instructors, 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 host properties encountered a seasonal labor shortage due to the H-2B visa cap and sought a viable alternative for bringing foreign ski instructors, normally granted H-2B status, to their resorts for the winter season. However, the international cultural exchange program as currently structured and implemented 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 23 countries represented by the beneficiaries included in this petition.

For example, the only daily activities identified in one host property's proposed cultural exchange program, which was submitted in response to the AAO's RFE, include: placing a map of the world at two resort buildings identifying the national origin of its cultural ambassadors; having cultural ambassadors greet guests in their native language at the ticket office; having participants wear name tags identifying their home countries and the title of cultural ambassador; wearing a flag pin; distributing business cards to guests; and placing a welcome sign at the ski lift base when a cultural ambassador is on duty as lift operator so that guests are aware of the person's name and home country. Merely identifying the participants to resort guests as "cultural ambassadors" does not equate to a structured cultural exchange program. These types of interactions scarcely qualify as "cultural exchanges" and are clearly secondary to the employment.

Similarly, the "Discover the World with Globee" cultural activity program for children was not designed to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of any one country and does not provide the participants with the opportunity to engage in the type of cultural exchange contemplated by the regulations. The petitioner emphasizes that "Globee has no particular cultural, political or religious agenda," and instead is designed to teach general cultural awareness and tolerance. While the AAO certainly acknowledges the value of the program, it is the petitioner's burden to establish how distributing the materials to children and signing their Junior World Traveler passports constitutes the sharing of each participants' own culture and traditions. There is nothing in the record to suggest that completion of the activities in the children's program would occur during the course of a private ski lesson where the goal is to teach the guests specific techniques to improve their athletic performance. Furthermore, while the petitioner presents "Discover the World with Globee" as a cornerstone of its cultural exchange program, it is evident that not all program participants will be assigned to work as ski instructors for children's classes.

The AAO notes that some of the cultural activities outlined in the petitioner's general program description are not necessarily implemented at all host properties. For example, the petitioner referenced a children's international theme day, a weekly "international lunch time" for children, a twice-monthly "international lunch time" for adults, monthly cultural spotlights, monthly cultural celebrations, international food and beverage specials, an "international race day" held each Thursday, and a "Thursday Night Light" ceremony highlighting a "nation of the week." It is unclear to what extent these programs have been implemented, as the "monthly recaps" submitted to the petitioner by the host property contain only brief notes regarding the program. Regardless, while some of these activities would provide more meaningful opportunities for cultural exchange than an ordinary ski lesson, it does not appear that all participants would be involved in these interactions even on a weekly basis, much less as the essential component of their day-to-day employment.
Similarly, there is no documentary evidence that the beneficiaries have actually completed the monthly cultural seminars outlined in the petitioner's program description. Based on a review of the brief performance evaluations completed by the host properties at the end of the program, the beneficiaries are primarily evaluated on their consistent participation in daily guest interactions, i.e., greeting guests and identifying themselves as cultural ambassadors, during the course of their assigned job function.

Overall, the petitioner's program is structured in such a way that the only *bona fide* cultural programs and activities, such as the international story hours and holiday celebrations, would (1) account for a very small portion of the participants' time; and (2) occur outside of the participants' primary responsibility of providing private ski lessons. Again, the AAO is not persuaded that such elements as wearing a name tag identifying a person's country of origin, wearing a flag pin, displaying a world map, speaking a few words in a foreign language, distributing the Discover the World with Globee materials, or offering a few facts or answering a few questions about one's country during the course of providing ski instruction 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 ski instructors and would occur outside of their primary employment responsibilities.

The presence of the foreign employees may contribute to some guests' overall experience at the participating host properties, and the Q-1 employees may participate to a greater extent in culture-based activities than foreign ski instructors who have worked at the host properties in H-2B or another nonimmigrant status. The

fact remains, however, that the participants will be spending the majority of their time on a daily basis instructing students in proper skiing techniques necessary to advance the students to the next level according to the resorts' ski school guidelines, during which periods their cultural interaction with resort guests is necessarily limited to unstructured and informal cultural exchanges. The AAO assumes, and it has not been shown otherwise, that the Q-1 ski instructors are required to instruct students in the same skills and at the same pace as any other instructors at the participating resorts, which would necessarily 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 beneficiary would be engaged in employment or training of which the *essential element* is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the aliens' countries of nationality. Accordingly, the appeal will be dismissed.

IV. Conclusion

The petition approval will be revoked and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.