

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.

The petitioner filed the nonimmigrant petition seeking approval 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 states that it is engaged in hotel management, cultural exchange programs, information technology and construction management. The petitioner seeks to employ the beneficiaries temporarily in the United States as cultural exchange coordinators for a period of 15 months, and indicates that they will be placed at hotels. All four beneficiaries were in the United States in J-1 status at the time of filing.

The director denied the petition concluding that the petitioner's program is not eligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act. In denying the petition, the director determined that the petitioner failed to establish that its cultural exchange program has a cultural component that is designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality, or that such component is an essential and integral part of the international cultural exchange visitor's employment or training, as required by the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B). The director further determined that only two of the four beneficiaries had received a waiver of the two-year foreign residency requirement applicable to J-1 exchange visitors and would therefore be otherwise ineligible for the requested change of status.

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, counsel asserts that the director's decision contains multiple errors of fact and law. Counsel contends that the director disregarded the applicable standard of proof and the "enormous amount of probative evidence offered by the petitioner." Counsel claims that, contrary to the director's finding, the beneficiaries will not be performing the duties of "regular hotel employees," but will "spend the vast majority of their day engaging in tasks which further the educational and cultural goals of the exchange program." Counsel submits a brief in support of the appeal.

I. The Law

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

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

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

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

* * *

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

- (A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.
- (B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.
- (C) *Work component.* The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

II. The Petitioner's Cultural Exchange Program

The first issue in this proceeding is whether the petitioner established that its proposed program is eligible for designation by USCIS as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act. The director determined, in part, that the petitioner failed to establish that its cultural exchange program has a cultural component that is designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality, or that such component is an essential and integral part of the international cultural exchange visitor's employment or training, as required by the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 11, 2008, accompanied by the following supporting documentation regarding the petitioner's cultural program:¹

- A letter dated September 10, 2008 from the petitioner's Global Recruitment Manager, describing its program.
- Copies of Form I-797 Approval Notices, issued to [REDACTED] for Q-1 classification petitions approved by USCIS between 2003 and 2008.
- The petitioner's International Cultural Exchange Visitor Program Structured Training Plan (GSTP), which includes a weekly schedule for the 15-month program.
- A copy of the petitioner's "Daily Cultural Activity Checklist" listing 25 activities to be completed by program participants, to be monitored by the property manager and the petitioner's manager.
- Evidence related to the "latest shows" held by the petitioner in Hilton Head, Myrtle Beach and Atlanta, GA.²
- Evidence of previous cultural shows and presentations held by Global Hospitality Exchange between 2003 and 2007;
- Testimonials and affidavits from prior Global Hospitality Exchange Q-1 program participants regarding their cultural exchange activities in the United States;
- Letters from participating host properties and other cultural program partners;

¹ The petitioner, [REDACTED], stated that it is one of four "wings" in [REDACTED] [REDACTED] which is described as a management company that offers services in hotel management, construction management, cultural exchange, and computer information technology. The petitioner explained that the cultural exchange wing is managed by [REDACTED] in collaboration with [REDACTED]. The petitioner stated that the beneficiaries will be working directly for GHE, but emphasized that the group's various "wings" are not separate companies and all have the same Federal tax identification number.

² The evidence consisted of web site advertisements, photographs, copies of flyers and other documentation related to the following events: a "Graduation Event" held August 27, 2008 at the Sands Ocean Dunes Resort in Myrtle Beach; a "Fall Kickoff with Beyond" featuring "daily cultural villages" at Myrtle Beach properties between September 5 and 26, 2008 in Myrtle Beach; "Jamaica, Jamaica, Jamaica" featuring cultural villages and managers receptions between August 7 and August 20, 2008; a "Multicultural Week" held at Sands Resorts, Myrtle Beach in August 2008; "Rang Tarang" cultural evening held in March 2008 at the Sands Ocean Dunes Conference Center in Myrtle Beach.

- An e-mail message dated September 30, 2004 from the Vice Consul of the United States Embassy in Seoul, Korea, addressed to the petitioner, stating that the petitioner "is meeting all the criteria set forth by the Foreign Affairs Manual," apparently referencing four Q-1 visa applicants sponsored by GHE.

In its supporting letter dated September 10, 2008, the petitioner explained that its cultural exchange program takes place at various hotels and resorts operated by its "Affiliate Cultural Partners" (ACPs). The petitioner emphasized that the beneficiaries will be assigned to hotels and resorts "throughout metropolitan Atlanta, Georgia and South Carolina" that are "located near major highways and interstates that are easily accessible to the American public." The petitioner further noted that "[a]ll guests that stay at one of our properties are introduced to various international cultures and presentations in interesting and creative ways that adapt naturally to a hotel or resort." The petitioner indicates that cultural activities are the prime reason for the presence of the participant at the property, while "the employment only serves as a tool" to implement the cultural program. The petitioner notes that it recruits exchange visitors who are currently enrolled in hospitality duties programs abroad, or who are already experienced hospitality workers, so that they can easily adjust to the hotel atmosphere and "feel confident about sharing their culture with the guests."

According to the petitioner's plan, it "presents foreign cultures to the American public during the course of a normal business day" by encouraging program participants to wear "culturally proud nametags," and native dress on national holidays, to display maps and souvenirs of their home country, to provide hotel guests with international recipes and brochures, to play international music over the hotel's sound system, and to plan and stage celebrations of their own culture. The petitioner stated that by displaying symbols of their cultural heritage, the program participants evoke questions from the hotel guests, thereby providing an opportunity for cultural exchange. The petitioner further indicated that the participants are expected to invite ethnic groups and associations to the property to put on cultural exhibits, to invite international speakers for seminars and lectures, and to host cultural book discussion events.

As an example of its cultural events, the petitioner stated that it holds a cultural history month at ACP properties, during which participants "assemble a model village of artifacts, artwork, flags, music, figurines" in a high traffic area of the hotel. The petitioner stated that the cultural model village is promoted to the general public by the ACP property and GHE. The petitioner stated that program participants also participate in a "manager's reception presentation" at 5:00 p.m. on most weekdays, which provide a chance for them to talk and mingle with hotel guests and serve international foods. Finally, the petitioner indicated that program participants coordinate an "Around the World in Just One Day," event at the ACP properties on a monthly basis, which is "open to the general public." The record shows that the petitioner sometimes sponsors cultural events at other locations besides the ACP properties and resorts, sometimes with co-sponsors.

The petitioner's Structured Training Plan includes the following program description:

Participants work within various departments of these hotel properties to share their culture with hotel guests, gain work experience and hospitality skills. The program is accessible to the American public solely for the purpose of cultural exchange and the participant's work and

position cannot be independent of the commitment to share their respective culture with the hotel guests, fellow staff and all contacts.

According to the program schedule, the beneficiaries spend one week upon arrival in the United States at the petitioner's headquarters undergoing orientation and cultural exchange program training, and begin shadowing current program participants' at their assigned property, before beginning to work independently during the fourth week, at which time they will dress in their native costumes, wear nametags, complete a daily checklist, decorate the work environment, and interact with hotel guests. Each month includes one week devoted to planning and implementing a manager's reception. During the second month, the participants are to "organize ideas for cultural presentations" and develop "cultural exchange nametags" to reflect their home country and flag. During month three, the participants form a committee for an International Food Festival and hold the festival for "property guests and public." During the fourth month, the participants are expected to develop cultural history projects and bulletin boards, and during the sixth month, the participants are expected to deliver a cultural customs presentation for guests and public. In the seventh month, the participants are expected to deliver a "culture in travel and tourism" power point presentation in the hotel lobby. During the ninth month, the participants would hold a cultural dress and fashion show at the property after planning, marketing and promoting it. In the eleventh month, the participants are expected to create an "International Gesture Dictionary" for use by the property and share it with staff members. During the 12th month, the participants are to hold a "Season's Greeting cultural event." The participants have a "final cultural exchange program presentation" due at the end of the fourteenth month of the program.

The director issued a request for additional evidence on November 3, 2008. The director advised the petitioner that USCIS was not persuaded that the work component serves as a vehicle to achieve the objectives of the cultural component of the petitioner's program, but rather appears to be independent of the cultural component. The director requested additional evidence to establish that the petitioner operates an international cultural exchange program that meets the public accessibility, work, and cultural components set forth at 8 C.F.R. § 214.2(q)(3)(iii).

In response to the RFE, the petitioner submitted a slightly revised letter further explaining how its cultural exchange program satisfies the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). The petitioner emphasized that "all guests that stay in one of our properties are introduced to various international cultures and presentations in interesting and creative ways that adapt naturally to a hotel or restaurant environment." The petitioner further noted that the program is not only available to paying guests of the hotel, but to the general public sharing a common cultural understanding. The petitioner indicated that it spends thousands of dollars on a monthly basis promoting its cultural events that take place daily in its partner hotels and resorts by advertising through mailing lists, Facebook ads, newspaper ads, radio ads and Chamber of Commerce newsletters. The petitioner also stated that "other than the hotel guest, there is a majority of general public that visits our cultural locations to attend managers receptions, cultural weeks, book expos and culinary classes."

With respect to its program's work component, the petitioner emphasized that, "unlike a regular hotel employee at ACP, our participant is engaged in structured cultural activities with the sole objective of sharing his or her Country's history, culture and traditions." The petitioner described the daily activities of a participant, noting that he or she might start her day by preparing a breakfast dish from his or her native country, decorating the hotel's

restaurant to reflect the international environment, ensure that the name of the dish and country of origin are displayed, distribute flyers with the recipe, serve the dish in his or her native costume, and play international music in the background as they interact with guests. The petitioner noted that other program participants may prepare traditional snacks or sweets for guests to sample at other locations, such as check in/check out, and later prepare hors d'oeuvres for a manager's reception, while also decorating the hotel lounge to reflect an international environment.

The petitioner emphasized that the cultural component is the primary focus of its program and that many of its guests visit its hotels and resorts "not merely for sleeping accommodations, but to actually feel and get first hand information about the international culture and to discuss cultural and ethnic themes and issues, to hold seminars and lectures, discussion groups and classes."

The petitioner's response to the RFE included an evaluation of its cultural exchange program by [REDACTED] Sturman, professor of hotel administration and human resources at Cornell University, who states his opinion that the petitioner's program participants "clearly qualify for a Q-1 visa."

[REDACTED] states:

The cultural interaction, and ultimately cultural education of the guests, is well structured and organized. Guests are not simply staying at the hotels; they are being given a planned and thorough cultural experience. The Cultural Program is extensively marketed, and the American public is encouraged to attend the shows, book expos and seminars and attend the events specifically planned as part of the program. As such, the duties of those hired for the Culture Program are inherently and completely connected with the program. Job duties of those hired for this program are fully integrated with the requirements of the program.

For example, while a front desk clerk brought in under the program will have to perform the regular duties associated with this position (answer phones, check in guests, handle guest complaints), the position requires the individual to focus on talking about his or her culture, talking about the decorations at the front desk, promoting the next cultural event, and so forth. All aspects of the job duties are performed [*sic*] with the goals of the cultural exchange program in mind. As another example, the F&B Cultural Exchange Coordinator has very different duties from other F&B Managers. That is, the F&B Cultural Exchange Coordinator focuses on promoting the featured ethnic dishes, inviting people to receptions where the ethnic dishes are displayed, etc. Similar examples can be provided for all positions to be filled under the cultural exchange program: all duties are performed with the purpose of promoting and enhancing the cultural exchange. As such, it is clear that the work component of those to be brought in under the cultural exchange program is not independent of Cultural Exchange and they are both fully integrated with each other.

The petitioner submitted additional letters from recent program participants who have worked in the positions of chef, food and beverage worker, restaurant server, bartender, front desk assistant, food and beverage supervisor,

housekeeping supervisor, and sales director, who discuss how they shared their culture while performing their job duties.

The petitioner also submitted affidavits from several of the hotels that host the petitioner's cultural exchange coordinators, as well as correspondence the petitioner received from guests who attended some of the petitioner's cultural events. In addition, the petitioner provided evidence that its major events have been publicized on the petitioner's own web site and Facebook page, on Chamber of Commerce web sites, through flyers and signs placed at the hosting property, in local newspapers, through a mailing list, mailed invitations and "other marketing mailings."

Finally, the petitioner compared its Q-1 program to those offered by other organizations in the hospitality industry in hotels and resorts, noting that the petitioner's program meets or exceeds the qualifications of similar programs that have been consistently approved by USCIS.

The director denied the petition on December 24, 2008, concluding that the beneficiaries' primary work duties would be independent of any cultural duties in which they would be involved. The director noted that all four beneficiaries have been in the United States on J-1 visas training in the hospitality industry, with an emphasis on front desk operations and culinary arts. The director concluded that the beneficiaries with prior experience in front desk operations would serve as front desk clerks performing duties such as answering the phone, checking in guests and handling guest complaints, while participants trained in the culinary arts would be preparing food and beverages to be served to resort guests.

On appeal, counsel for the petitioner asserts that "even the most cursory examination of the evidence reveals that all of the program participant's job functions or training are used as a platform to enhance the public's knowledge of their native culture." Counsel emphasizes that the petitioner provided "a detailed letter explaining the duties of each beneficiary and how these duties were an integral part of the exchange program." Counsel states that the director "made a clear error of fact" when he concluded that the beneficiaries would be performing the regular duties associated with front desk operations, and further explains how the petitioner's work component serves as a vehicle to achieve the objectives of the cultural program, as follows:

Although a program participant may be assigned to work alongside a regular front desk clerk; he or she does not replace that front desk clerk, nor does he or she share the same objectives as a front desk clerk, whose sole goal would be to greet guests, handle check outs and make reservations (and ultimately increase hotel profits.)

A program participant may be responsible for greeting guests however, the cultural program participant is expected to greet a guest wearing national costume and informing the guest of the associate's country of origin. Furthermore, the cultural program participant is trained and expected to engage guests in conversations about their home country, invite guests to cultural events being staged at the hotel and educate the guest about their country of origin.

Counsel asserts that "clearly the cultural heritage of the program participant is expressed if he or she greets a guest in their native tongue while wearing a native costume," and that "each member of the public who is greeted

by a cultural program participant will be introduced to the unique culture of the program participant through the participants' performance of the assigned duties."

Counsel further contends that the director "erroneously found that the beneficiaries would be preparing food and beverages to be served to guests." Counsel emphasizes that "[a]lthough the beneficiaries may assist in meal preparation they are not kitchen assistants," but rather "will devise ethnic menus reflecting their own culture and heritage, assist in their preparation, create display cards describing the dish and discuss the meal and its origins with guests and customers." Counsel asserts that the preparation of such dishes expresses the participants' ethnic heritage and leads to the sharing of the culinary traditions of their home countries.

Counsel claims that, during the "vast majority of their time," program participants are "engaging in tasks that are purely cultural, for example, the staging of cultural exhibits." Counsel asserts that the director erred by requiring that "any and all tasks be purely cultural in nature," noting that the regulations "clearly permit the dual functionality of any task or duty to be performed by the program participant," such that a task or duty which has a cultural function as well as a work or training function is permissible according to the language of the regulation.

Finally, counsel contends that the director applied a higher standard of proof than the "preponderance of the evidence" standard applicable in immigration proceedings, and "held the petitioner to a much higher standard than any other similarly situated petitioners." Specifically, counsel states that [t]he denial of Petitioner's petition on the basis of inadequate proof that the work component was an integral part of the cultural exchange program amounts to an abuse of discretion because there is no rational explanation for the finding," in light of the "mountain of evidence" submitted. Counsel stresses that the director "held petitioner to an impossibly high standard of proof requiring that it must provide the Service with evidence that the work component is completely dependent on the cultural component of that program."

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination that the petitioner failed to establish that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3) because the petitioner failed to establish that the beneficiary would be engaged in employment or training of which the *essential element* is sharing the culture of the alien's country of nationality.

To be eligible for designation as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act, the petitioner must establish that its proposed program satisfies all of the requirements at 8 C.F.R. § 214.2(q)(3) pertaining to the program's public accessibility, cultural component and work component. The director found that the petitioner failed to establish that its program satisfies the work component requirement set forth at 8 C.F.R. 214.2(q)(3)(iii)(C).

As a threshold issue, the AAO notes that the petitioner has not submitted a detailed letter explaining the duties of each beneficiary and how these duties were integral to the cultural exchange program, as claimed by counsel on appeal. The petitioner has not provided any detailed description of the specific duties to be performed by the four beneficiaries as "cultural exchange coordinators," nor has it identified what specific hotel or resort occupations they will fill, such as front office clerk or food and beverage positions. 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)). While the petitioner maintains that it does not place its program participants in back office, housekeeping, maintenance or other roles that do not have direct contact with hotel guests, the AAO notes that previous participants have stated that they served in roles such as housekeeping supervisor and sales director. It appears that the director assumed that the beneficiaries would be serving in culinary or front desk positions based on the stated purpose of their recent periods of training in J-1 status. However, the AAO notes that it is the petitioner's burden to establish what types of roles and duties will constitute the work component of its program for the individual beneficiaries included in the petition.

Furthermore, the petitioner has also failed to identify the location or locations at which the beneficiaries will be placed. The petitioner merely stated that the program will take place "at several hotels and resorts throughout metropolitan Atlanta, Georgia and South Carolina." The AAO finds it reasonable to expect the petitioner to identify the specific host properties that will receive the beneficiaries, and to submit documentation related to the implementation of its cultural exchange program at these specific properties.

Although the record indicates that the program participants are required to "share their culture" with hotel guests and staff, the petitioner has also indicated that it recruits hospitality students and professionals who are already experienced in the hotel industry, and assign them to traditional hospitality industry roles, such as front desk positions or food and beverage positions. Counsel claims on appeal that although the petitioner's program participants may "perform certain duties at the reception desk of the hotel," they are not front desk clerks because they "wear international dress and name tags" and engage guests in conversations about their home countries, while any assistance they provide to guests is "incidental." However, other evidence in the record confirms that that the petitioner's program participants do in fact perform the same basic job functions as "regular" hotel staff. For example, Dr. Sturman states in his evaluation that "a front desk clerk brought in under the program will have to perform the regular duties associated with this position (answer phones, check in guests, handle guest complaints)," duties that do not appear to be incidental. In addition, prior participants have provided affidavits in which they identify their roles as "restaurant server," "front desk assistant," "food and beverage supervisor," and "housekeeping supervisor." The petitioner has not established how guest service or other regular duties inherent to such positions would be "incidental" to such roles.

The evidence in the record is insufficient to establish that the foreign program participants share their respective cultures with the public on a regular basis as an essential element of their work-related responsibilities. Rather, the cultural aspects of the participants' activities appear to be tangential to their tasks as hotel employees responsible for the day-to-day operations of the front desk and other departments. While counsel correctly states that 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 petitioner's cultural component is wholly designed to exhibit or explain any of these aspects of Nepalese or Indian culture. Daily interactions with hotel guests such as wearing a country-specific nametag or native dress, handing out a recipe or brochure, decorating the hotel's front desk, displaying flags and maps, or playing international music, are merely casual and unstructured cultural exchanges. Such interactions must be deemed secondary to the beneficiaries' employment as hotel workers. The petitioner has not

established that the daily cultural interactions of the participants would be part of a structured program truly designed to share the history, culture, and traditions of the country of the aliens' nationality.

Furthermore, while the petitioner indicates on appeal that the beneficiaries would spend the majority of their time while on duty engaging in cultural interactions, the record shows that the beneficiaries are responsible for performing the same basic job duties as other hotel workers working in the same hotel departments, which would reasonably limit the amount of time they could spend interacting with individual guests. The AAO is not persuaded that the beneficiaries, in their roles as front desk agents or servers, for example, would realistically spend less than half of their time actually performing the regular duties of the position to which they are assigned.

Finally, certain aspects of the petitioner's claimed cultural program simply have not been documented. Although the petitioner claims to invite guests and speakers for presentations, book discussions, seminars, courses, language and culinary classes, the petitioner has not submitted evidence that any of these more formal means of cultural exchange have taken place at any of its properties. The petitioner claims that the participants take part in daily "manager's receptions," at the host properties, however, the petitioner's Structured Training Plan indicates that manager's receptions are held only once per month. Regardless, it is unclear how any of these functions would be carried out as a part of the beneficiaries' regular front desk or food and beverage responsibilities. The evidence shows that the petitioner's program participants do engage in more formal and structured cultural events such as "cultural week" events, and the East Meets West and Rang Tarang events documented in the record. However, these events are conducted independently from the participants' assigned hotel positions and occur with much less frequency. The AAO cannot conclude that any beneficiary participating in the program would participate in one of these structured cultural events more than a few times during a 15-month stay in the United States.

The AAO acknowledges the expert opinion from [REDACTED] which was submitted in response to the request for evidence. Although [REDACTED] is well-credentialed in the fields of human resources and hotel management, his letter does not speak directly to the critical question in this case – whether the beneficiaries will be primarily engaged in qualifying cultural exchange activities during the course of their regular work day, or whether their work as front desk clerks or food and beverage workers will be independent of the cultural program. Instead, [REDACTED] speaks in general terms regarding the petitioner's program, using language that at times appears to be derived almost verbatim from the petitioner's own letters. Furthermore, his description of the work component of the program undermines counsel's claim on appeal that the program participants "are not performing the duties of regular hotel employees." As noted above, [REDACTED] specifically states that "a front desk clerk brought in under the program will have to perform the regular duties associated with this position." Finally, it is unclear on what basis he rendered his opinion, as he has not identified what documentation was provided by the petitioning company, nor has he indicated that he has reviewed the statutory and regulatory requirements pertaining to Q-1 visas.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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. The presence of the foreign employees may contribute to some guests' overall experience at the participating hotels and resorts. However, the fact remains that the participants will be spending the majority of their time on a daily basis performing the standard duties of hotel workers, during which periods their cultural interaction with resort guests will be limited to informal and unstructured cultural exchanges.

Based on the foregoing discussion, the petitioner has not established that its cultural exchange program satisfies the cultural and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(ii)(B) and (C). Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the four beneficiaries, who were all in the United States as J-1 exchange visitors at the time of filing, have obtained the required waiver of the two-year foreign residency requirement and are eligible for the requested change of status.

Section 212(e) of the Act bars an alien in J-1 nonimmigrant status from applying for an immigrant visa, permanent residence, or nonimmigrant H or L status, until the alien has resided in his or her country of nationality for at least two years after leaving the United States. In addition, section 248(a)(3) of the Act bars exchange visitor aliens from changing nonimmigrant classification to anything other than A or G diplomatic visa status. *See also Matter of Kim*, 13 I&N Dec. 316 (Reg. Comm. 1968). Section 212(e) concludes by providing for a discretionary waiver of the two-year foreign residence requirement if, among other grounds, the departure from the United States would impose exceptional hardship upon the alien's U.S. citizen spouse or child.

The director determined that the petitioner submitted approval notices for Form I-612, Application to Waive Foreign Residence Requirement, for only two of the four beneficiaries.

On appeal, the petitioner asserts that three beneficiaries, [REDACTED] and [REDACTED] were in receipt of approved J-1 foreign residency requirement waivers and that evidence of the approved waivers was provided to USCIS prior to the denial of the petition. Counsel asserts that the fourth beneficiary is in receipt of a U.S. State Department "no objection" letter and will be eligible to change her status or consular process should the I-129 petition be approved.

Upon review, the AAO notes that the petitioner submitted evidence of approved waivers for only two beneficiaries, [REDACTED] and [REDACTED], prior to the adjudication of the petition. The petitioner provided a copy of a State Department "No Objection" statement and a USCIS receipt number for the Form I-612 application filed by [REDACTED]. USCIS records show that this application (EAC 09 057 40959) was filed on November 26, 2008 and approved on December 31, 2008, one week after the director's decision was issued. Therefore the director correctly determined that this beneficiary was not eligible for the requested change of status as of December 24, 2008. Although counsel indicates on appeal that the remaining

beneficiary, [REDACTED] has received a State Department "no objection" statement and "will be eligible to change her status," the petitioner has not submitted any documentary evidence related to her waiver application other than statements from the Indian government. USCIS records do show that [REDACTED] filed a Form I-612 with USCIS on January 8, 2009, and the application was approved on February 2, 2009 (EAC 09 100 40523). Therefore, the director correctly determined that [REDACTED] was not eligible for a change of status as of December 24, 2008. The AAO notes for the record that, as of February 2, 2009, all four beneficiaries had received waivers of their two-year foreign residency requirement.

Beyond the decision of the director, the AAO finds that the petitioner failed to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed, as required by 8 C.F.R. §214.2(q)(4)(D).

The petitioner indicates that it intends to pay the beneficiaries as follows: a \$600 monthly stipend; fully furnished housing valued at \$350 per month; and utilities, cable, phone, transportation, and housekeeping services valued at \$205 per month, for a total compensation package valued at \$1,155.00. The petitioner stated that the minimum wage in Georgia is \$5.15 per hour or \$892.67 per month. However, as noted above, the petitioner has not identified the actual work locations of any of the beneficiaries and it cannot be determined whether the salary offered should be compared to local domestic workers in Georgia. Regardless, even assuming that all employees would work in Georgia, the petitioner relied upon an outdated minimum wage figure for Georgia. The federal minimum wage was increased in 2007 pursuant to the Fair Labor Standards Act (FLSA), as amended, in a three-step process.³ As of July 24, 2008, the federal minimum wage was increased to \$6.55 per hour, or \$1,222.67 per month, based on a 40 hour workweek.

Thus, the total compensation offered is actually less than the minimum wage and therefore cannot be considered comparable to local domestic workers. Furthermore, the petitioner has not submitted evidence that minimum wage is standard pay for the positions offered, as it has not identified the exact positions to be held. Some of the participants in the petitioner's program, based on the evidence submitted, are actually experienced hospitality workers who would not necessarily be expected to work at the entry-level wage for the industry, much less at minimum wage. For these additional reasons, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ *See* "Minimum Wage Change" http://www.dol.state.ga.us/spotlight/sp_minimum_wage_change_2007.htm, (accessed on April 16, 2010).

The AAO acknowledges that USCIS has previously approved Q-1 cultural exchange program petitions filed by [REDACTED], the petitioner's claimed affiliate. It is worth emphasizing 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 the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). 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.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions filed by the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.