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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D10

[redacted]

DATE: JUN 27 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiaries: [redacted]

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

ON BEHALF OF PETITIONER: 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, 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 Program Associates for a period of 15 months. The evidence of record indicates that the petitioner places its Q-1 program participants at hotels and resorts referred to as "Affiliated Cultural Partners."

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 visitors' 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 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 the director held it to "an unreasonably and impossibly high burden of proof." The petitioner contends that "even the most cursory examination of the evidence reveals that all of the program participant's job functions or training is used as a platform to enhance the public's knowledge of their native culture." The petitioner asserts that "the vast majority" of the cultural program associates' time is spent engaging in tasks that are "purely cultural" and that the director "erred by insisting that any and all tasks be purely cultural in nature." Finally, the petitioner, citing to *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 859 (9th Cir. 2004), asserts that the director abused his discretion by holding the petitioner to a higher standard than any other similarly-situated petitioners.

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.
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> * * *
>
> (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 sole 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).

A. Initial Evidence

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 17, 2010, accompanied, *inter alia,* by the following supporting documentation regarding the petitioner's cultural program:

- A letter dated June 11, 2010 describing the petitioner's cultural exchange program.
- An organizational chart for the petitioning company.
- The petitioner's International Cultural Exchange Visitor Program Structured Training Plan (GSTP), which includes a weekly schedule for the 15-month program.
- An hourly breakdown of cultural activities performed by program participants during a typical week.
- Job descriptions for each beneficiary included in the petition (seven in total).
- Screenshots from the petitioner's public website and company brochure.
- Evidence of cultural events sponsored or held by the petitioner and its affiliate, Global Hospitality Exchange, Inc. (GHE), between 2003 and 2010, including flyers, other advertising materials, and photographs.
- Letters from participating host properties and other cultural program partners
- Letters and affidavits from the beneficiaries of the instant petition and prior program participants.
- An evaluation of the petitioner's cultural exchange program written by Professor Michael C. Sturman, Cornell University.

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

> Participants are recruited from around the world to share and represent their culture and home land with the American public through the exciting world of hospitality. Throughout the duration of the program, the GHE participant will be supervised by GHE management and staff at one of GHE's Affiliate Cultural Partners (ACP). 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.

The training plan indicates that the program participants "present foreign cultures to the American public during the course of a normal business day using the vehicle of hospitality and its world travelers to share new knowledge and increase an international interest and understanding." The plan indicates that its cultural component "is evident and enhanced through guest interactions and cultural exchanges, culturally proud nametags, native dress, multimedia tools used to run cultural presentations and music, etc."

According to the program schedule included in the Structured Training Plan, 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 planning and implementation of one 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 twelfth 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.

In its supporting letter dated June 11, 2010, the petitioner emphasized that its cultural program "holds events, classes, exhibitions and cultural programs in resorts, hotels, Universities and colleges." The petitioner indicated that the general public is invited to its events through advertisements and notifications placed with local chambers of commerce, mass mailings, and advertisements in public forums, such as newspapers, Facebook, and Twitter. The petitioner further noted that "events were held at venues which were open to the general public such as resorts, hotels, restaurants, bars and cafes."

The petitioner further asserted that "the cultural component forms the basis of the exchange program with participants spending the majority of their time in the United States assisting in the planning, coordination and implementation of various cultural functions, events, and activities."

Finally, the petitioner noted 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." The petitioner emphasized that its cultural exchange associates "do not replace regular employees," but rather "work along side them performing somewhat similar tasks on occasion." The petitioner stated that "their duties remain constantly focused on cultural education and diversity and therefore differ from those of regular hotel employees."

The petitioner stated that "program participants engage in cultural education every day in the following ways":

- Wearing costumes, uniform or dress that reflects their country of origin.
- Decoration of host hotel to reflect participant's country of origin.
- Wear name tag that specifies country of origin.
- Participants are encouraged to initiate conversation and encourage questions about their culture and country from hotel guests and the general public.
- Participants who are chefs prepare menus and food from their country of origin and provide international recipes to guests free of charge.
- Participants inform public of upcoming events, exhibits and webinars and encourage their participation.
- Distribute educational leaflets and brochures to the public.
- Public celebration of major ethnic holidays.
- Key card inserts are provided at the time of check in with the participant's name, miniature flag and country of origin.
- Participation in cultural trivia nights where guests and customers win prizes for demonstrating their knowledge of world cultures, history and events.

The petitioner provided a list of approximately 20 recent cultural events in which its current and former cultural program associates have participated, accompanied by evidence of advertisements and photographs of many of the listed events. The events included celebrations of aspects of Indian, Turkish, Polish, Nepalese, Argentinean, and Korean culture, including music, dance and cuisine. The majority of events were held at hotels and restaurants in Georgia, Louisiana, California, and South Carolina. The petitioner also submitted evidence of prior cultural events dating back to 2003. The record shows that the petitioner holds events at hotels and restaurants, and occasionally sponsors cultural events at other locations besides the ACP properties and resorts, sometimes with co-sponsors.

The petitioner's initial evidence included an evaluation of its cultural exchange program by [redacted] 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 Cultural 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 perform [*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.

With respect to the role of the cultural program associate, the petitioner provided both a general overview of the role and specific job descriptions for each beneficiary included in the petition. In addressing the work component of its cultural exchange program, the petitioner stated that "although it may appear that cultural program associates perform similar duties to regular hotel employees, further examination reveals that all of the cultural program associates' job functions or training are used as a platform to enhance the public's knowledge of their native culture," and that "all job duties or functions result in public education and are a vehicle to achieve the objectives of the cultural program." The petitioner's letter included a chart detailing the differences between the duties performed by a cultural program associate and those performed by a "regular employee."

The petitioner also submitted the requested job descriptions for each beneficiary. The job descriptions are substantially the same, with some beneficiaries assigned to front desk operations and others assigned to restaurant/food and beverage operations. The job duties for a beneficiary from India who will work in front desk operations are as follows:

> 1. The Cultural Program Associate follows the duties listed in Structured Training Plan. On the contrary, a regular hotel employee follows the duties listed on the employee handbook.
> 2. For the Cultural Program Associate, duties vary greatly over the course of training or cultural program. . . .
> 3. The Cultural Program Associate assist[s] with development of ethnic breakfast menu, dishes, create recipe cards for the public along with displaying cards describing the dish and

country of origin. While a regular hotel employee only serves standard dishes from the corporate menu.

4. The Cultural Program Associate works in a hotel and performs all duties with the sole purpose of sharing and exchanging her culture. Whereas a regular hotel employee works with the purpose of generating revenue and profits.
5. The Cultural Program Associate will follow a daily cultural activity checklist everyday. These activities will be supervised by the Cultural Specialist. On the contrary, a regular employee performs regular tasks, assigned by the regular area manager.
6. While working at the front desk as a Cultural Program Associate, she will greet and meet the guest, attend phone calls etc. but is not a front desk agent because while at work the Cultural Program Associate will be wearing her traditional British outfit, along with a name tag with her name and country of origin. . . . At the front desk the Cultural Program Associate will be promoting the cultural events going on that day, giving guest flyers for the monthly mega cultural event of the month and also handing out flyers of the day about his [*sic*] Country.
7. The Cultural Program Associate will ensure that she introduces herself to the guests and engages them in a conversation that involves her country and its culture. This conversation is not just based on "if and when" and it is not haphazard. . . . During the cultural conversation the Cultural Program Associate will hand out brochures, music CDs, books etc. based on Indian culture. . . .
8. The Cultural Program Associate will also decorate the front desk/concierge desk and other appropriate area in a way that will reflect her culture also known as "Cultural Village." She will post flyers, pictures etc around the front desk area. . . .
9. The Cultural Program Associate will be responsible for conducting various cultural classes for hotel guests, as well as general public. These classes include language camps, art and music lessons, and Indian cooking classes. All these classes will introduce guests to Indian language, art, music, ethnic food, respectively.
10. In addition to conducting various cultural classes, the Cultural Program Associate will also hold seminars, presentations, webinars and online forums for cultural exchange[.] [S]he will be inviting international speakers who will give special presentations on India and its culture. . . .
11. The Cultural Program Associate will be responsible for organizing several international managers' receptions, on a regular basis. These receptions will include [e]thnic food from India, the menu for which will be designed by the Cultural Program Associate and will also help in preparation of food, but she is not a cook or a kitchen associate. The Cultural Program associate will serve ethnic Indian food to the guests but is not a food and beverage server, as she will be serving wearing her traditional Indian outfit with her nametag. The Cultural Program Associate will assist in the selection of traditional Indian music that will be played at the receptions. These receptions will also involve cultural presentations and interaction with the guests. A regular employee is not implicated toward organizing international manager's receptions.

12. While meeting guests whether at the front desk, at a manager's reception, or even in a cultural class, the Cultural Program Associate will distribute souvenirs like key chains, postcards etc that will represent India. Regular employee does not offer gifts to their guests.
13. The Cultural Program Associate will also present the guests with personalized key cards that are provided to the hotel guests at the time of check in, which would have her name, miniature flag and name of her country. Whereas the regular employee will give them regular door key cards.
14. The Cultural Program Associate will also be involved in hosting and organizing major cultural shows, events, stage exhibits and international speakers that involves extensive coordinating, planning and marketing. . . .

Finally, the petitioner submitted an hourly breakdown of a cultural program associate's job duties over the course of a week. Briefly, the petitioner indicated that the program participants' duties would be divided as follows:

- 2 hours per week – Reviewing the daily checklist of cultural activities for the day and follows duties listed on structured training plan.
- 4 hours per week – Prepares a model village of artifacts, artwork, flags, music . . . next to the concierge desk.
- 4 hours per week – Decorates the hotel: lobby, restaurants etc. with decorative [*sic*]. Wears traditional costumes . . . wears a name tag with his/her name and country of origin.
- 8 hours per week – Interacts with the guests while being trained, observing, and obtaining hands on practical experience at the front desk or restaurant. The Cultural program associate takes this opportunity to introduce himself and his culture to the guests, explaining the various traditions, history and the uniqueness of his/her country.
- 2 hours per week – Hands over various give-aways in the form of free recipes, key chains, key card inserts, brochures, post cards, souvenirs to visitors and hotel guests.
- 10 hours per week – Plans, markets, organizes and hosts various cultural events for hotel guests and also open to American public.
- 2 hours per week – Prepare a calendar of events on the petitioner's website.
- 3 hours per week – Encourage American public to participate in various chat sessions, discussion forums and webinars through [the petitioner's] website.
- 5 hours per week – Managers Receptions are held daily, usually on weekdays at 5 pm.

The petitioner also indicates that the beneficiaries will spend an unidentified amount of time hosting seminars, courses, lectures and language camps, and movie night surrounding cultural and ethnic issues and themes.

B. Request for Evidence and Response

The director issued a request for additional evidence ("RFE") on July 20, 2010, in which he instructed the petitioner to provide: (1) the location at which each program participant will be assuming a role as a cultural program participant, and a description of the program to be implemented by the beneficiaries at each specific

location; (2) comprehensive job descriptions for cultural exchange visitor positions and an explanation regarding how each job description incorporates the cultural exchange program; (3) detailed evidence establishing the amount of time the beneficiaries will spend accomplishing duties and responsibilities related to the cultural exchange program, and the percentage of time the beneficiaries will be involved with cultural activities while accomplishing the work component of the program; (4) a detailed itinerary or schedule of weekly/monthly/annual activities related to the petitioner's cultural exchange program for each location where the participants will be placed; and (5) copies of all agreements between the petitioner and each location identified to receive program participants.

In response, the petitioner noted that the director's RFE "contained numerous requests that had no basis under the law and could be construed to be intended purely to harass, bully and retaliate against the Petitioner." The petitioner emphasized that the petitioner has been running the same cultural exchange program for years and has consistently obtained approvals of Q-1 petitions.

In response to the director's request that the petitioner identify where each beneficiary would be working, the petitioner indicated that the information was provided at the time of filing. Specifically, the petitioner referred the director to the petitioner's letter, promotional materials for past events, and "sworn affidavits from affiliates, organizations and partners." Nevertheless, the petitioner asserted:

> Petitioner states that [the company] provides management services to a number of hotels, resorts and hospitality properties. [The petitioner] assigns cultural program associates for training to a designated property based on the training needs of the cultural program associate. These are ascertained during the orientation period.
>
> There is not a specific arrangement between [the petitioner] and the participating organizations to employ individual cultural program associates because the primary goal of the program is cultural exchange and not employment. [The petitioner] is a management company and is responsible for the training needs of the cultural program associates. Cultural program associates do not replace regular hotel employees. The employment needs of the participating organizations are not considered because this is not an employment program. . . .
>
> Petitioner's cultural exchange program stages cultural events at multiple locations. It is not possible to determine exactly where a cultural program associate will be training or engaging in cultural exchange activities. Many of the cultural events do take place in businesses that are operated by the Petitioner. Petitioner is providing a list of these locations however; many events take place off site in other venues that are open to the public. . . . Petitioner does not have employment contracts with the host venues because this would require a cultural program associate to provide employment services to a particular hotel throughout the program's duration. This request is at direct odds with the stated goal of the program- cultural exchange. The training and employment is incidental to the cultural exchange. The individual hotels do not receive employment services from the cultural program associates rather the Beneficiaries obtain

> training and hands on experience under the supervision and management of Petitioner while they engage in a cultural exchange.

The petitioner submitted a list of nine hotels located in South Carolina, Georgia and Louisiana, and stated that the petitioner manages each of the listed properties, where it supervises "the employment aspect of its cultural exchange program." The petitioner stated that "cultural program associates are not the same as regular hotel employees – they have different supervisors, duties and goals."

With respect to the remainder of the director's requests, the petitioner re-submitted and referred the director to the evidence submitted at the time of filing.

C. Director's Decision and Arguments on Appeal

The director denied the petition on October 12, 2010, concluding that the petitioner failed to establish that its program has a structured cultural component that is an essential and integral part of the beneficiary's employment. The director acknowledged the stated differences between the cultural program associates and "regular" hotel employees, but emphasized that the beneficiaries would be spending the majority of their time on a daily basis performing the standard duties of hotel workers, rather than participating in cultural activities as part of a structured program. The director emphasized that daily interactions with hotel guests are "merely casual and unstructured cultural exchanges."

The director further emphasized that while the petitioner provided evidence of more structured cultural events and activities beyond daily guest interactions, the petitioner had not documented with what frequency such activities would occur, nor established that such activities occur as part of the beneficiaries' work assignments as hotel employees.

On appeal, the petitioner asserts that its program is "very structured and fully complies with the Q regulations." The petitioner provides a list of recent and forthcoming cultural events for 2010, and notes that "it is not clear what other documentary evidence could possibly have been submitted to prove that a program exists." The petitioner contends that "the Service erred in holding the Petitioner to an unreasonably and impossibly high burden of proof which could not be met unless the adjudicator personally witnessed the cultural exchange program in action."

The petitioner emphasizes that its program is not only available to paying guests of affiliated hotels but to the general public. The petitioner states that it spends thousands of dollars monthly to promote culture events, and indicates that "there is a majority of the general public that visits our cultural locations to attend managers receptions, cultural weeks, book expos, culinary classes, they sign up on our site at ebeyond.org or facebook.com."

With respect to the work component of its cultural exchange program, the petitioner emphasizes that "unlike a regular hotel employee at ACP, our participant is engaged in structured cultural activities with the sole objective

of sharing of his or her Country's history culture and traditions." The petitioner emphasizes that "activities such as decorating a hotel front desk with something from the participants' native country or wearing their native attire are very important mediums for cultural exchange."

The petitioner further 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." The petitioner emphasizes that "all job duties or functions result in public education and are a vehicle to achieve the objectives of the cultural program." Specifically, the petitioner contends that all of the beneficiaries' tasks "(1) are mediums of cultural expression which lead to the achievement of the goals of the program and (2) result in the sharing of the program participants' culture."

The petitioner further claims that the director erred by concluding that the beneficiaries would be performing the regular duties associated with hotel positions, 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 quests, 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. Daily interactions with the hotels guests is not a casual conversation as stated by the Service, these interactions are a way to inform and share the history, culture and traditions of the associate's culture of origin, therefore leading to cultural exchange on a daily basis.

The petitioner 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." The petitioner contends that the director "clearly erred in finding that such tasks were independent of the cultural exchange program and did not further its goals."

The petitioner states 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." The petitioner 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 clearly permissible according to the language of the regulation."

In addition, the petitioner 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, the petitioner 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 evidence submitted.

Finally, the petitioner, citing *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 859 (9th Cir. 2004), asserts that "the Service further abused its discretion by holding Petitioner to a much higher standard than any other similarly situated petitioners." The petitioner discusses programs operated by Walt Disney World and American Hospitality Academy as examples of programs that "are currently being accepted as approved Q Cultural Exchange programs" that take place within hotels and resorts." The petitioner asserts that the scope of its program "far exceeds the approved Disney program."

III. Discussion

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 beneficiaries 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 cultural and work component requirements set forth at 8 C.F.R. §§ 214.2(q)(3)(iii)(B) and (C).

As a threshold issue, the AAO notes that the petitioner has failed to identify the location or locations at which each of the beneficiaries will be placed. The petitioner provided a "list of properties managed by petitioner which will host cultural program associates," and asserted that "many of the cultural events do take place in the businesses that are operated by the Petitioner." The petitioner indicated that the beneficiaries are participating in a training program and will be "receiving their assignments only after they have completed orientation and discussed their goals and objectives with the program administrator who then matches these with the training opportunities."

Upon review, the AAO finds it reasonable to expect the petitioner to identify the specific host properties that will receive these specific beneficiaries, and to submit documentation related to the implementation of its cultural exchange program at each of the listed properties. The director's request for a description of the program to be implemented by the aliens at each specific location was reasonable. The record contains evidence of previous cultural events held at some, but not all, of the nine listed properties. Furthermore, we emphasize that it is the

petitioner's burden to establish that the American public will be exposed to aspects of a foreign culture as part of a structured program. If the petitioner intends, for example, to place a single Q-1 program participant at the front desk of a specific hotel, it is the petitioner's burden to establish how such employee could singlehandedly administer a structured cultural program at that property.

Moreover, we note that the petitioner's Structured Training Program indicates that the beneficiaries are taken to their ACP host property on their eighth day in the United States, after enjoying a one-day welcome reception, and after completing only one day of orientation and three days of training. There is no evidence that the assignment process occurs during this first week. Furthermore, the AAO notes that, while the petitioner indicates that it cannot identify the beneficiary's work location until after orientation and training, it was able to provide their job descriptions and indicate to which hotel departments they would be assigned.

The petitioner has not provided an adequate explanation for its failure to document the beneficiaries' exact work location and the implementation of a structured cultural exchange program at each of the proposed locations. Any 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). 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

Furthermore, the petitioner has not submitted evidence to support its claim that it actually manages the nine listed host properties. The petitioner claims to employ approximately 100 employees. The petitioner's submitted organizational chart does include a "hotel division," with staff such as hotel managers, hotel departmental managers, and subordinate staff in the restaurant, housekeeping, food and beverage, front office and maintenance areas. The petitioner's claimed 100-person staff appears to be insufficient to provide such staffing to the nine listed hotels, particularly in light of the petitioner's organizational chart which lists several other fully-staffed divisions in the areas of construction, IT, training and development and cultural exchange programs. Furthermore, the petitioner submitted a letter from [redacted] who states that her organization has welcomed the petitioner's program participants "to our properties" over the past few years. [redacted] statement is not consistent with the petitioner's statement that its organization manages all of the properties at which the beneficiaries will be placed, and thus raises questions regarding the extent of the petitioner's control over the beneficiary's day-to-day duties. While it is not essential that the petitioner manage the participating host properties in order for a qualifying cultural exchange program to exist, it is essential that the petitioner submit reliable information in support of its visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, while the petitioner has provided a lengthy description of each beneficiary's duties, and provided an hourly breakdown of how each beneficiary's time would be allocated on a weekly basis, the AAO notes that such descriptions are written in very vague and general terms. The position description and position breakdown fail to

make any distinction between duties that are performed daily, those that are performed weekly, and those that occur with less frequency. For example, the hourly breakdown of the beneficiaries' proposed duties indicates that they will participate in a manager's reception on a daily basis. According to the petitioner's Structured Training Program, a Manager's Reception is planned for the third week of each month during months 3 through 14 of the program, and is not a daily event. The hourly breakdown indicates that the beneficiaries devote 8 hours per week to preparing a model village and decorating the hotel lobby and restaurants; however, decoration of the beneficiaries work area, whether it is the front desk or a restaurant, would presumably not need to be repeated daily. The petitioner has indicated that each beneficiary will prepare and serve an ethnic dish on a daily basis, but this duty is not listed on the hourly breakdown.

Notably, the petitioner indicates in the hourly breakdown that the beneficiaries will spend only eight hours per week interacting with guests "while being trained, observing and obtaining hands on practical experience at the front desk or restaurant." The hourly breakdown suggests that the remainder of the beneficiary's duties are identical, regardless of their assignment, be it front desk, food and beverage or kitchen operations. However, the petitioner has submitted payroll records for prior program participants which suggest that the beneficiaries are in fact paid for their services in accordance with the area of the hotel in which they are assigned. Based on the evidence submitted, hourly wages for prior participants have ranged from $6.00 per hour to $12.00 per hour, while other employees are salaried. The petitioner indicated on Form I-129 that is offering the beneficiaries an annual salary of $15,080, but it appears that the participants in the program actually receive payment commensurate with their assigned hotel or restaurant positions and level of experience. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Finally, we note that the petitioner indicates that the beneficiaries will spend 10 hours per week planning, marketing, organizing and hosting cultural events for hotel guests and the American public. The petitioner's Structured Training Plan fails to identify any weekly cultural events, or even any monthly cultural events that are open to hotel guests and the public, therefore, the stated amount of time devoted to such events on a weekly basis is not supported by other evidence in the record.

For these reasons, the AAO finds the petitioner's claims regarding the beneficiary's daily duties unpersuasive. While the AAO does not doubt that the beneficiaries may be required to perform the listed tasks during the course of the program, the record simply does not support a conclusion that the beneficiaries consistently perform such duties on a day-to-day or weekly basis.

Although the record indicates that the program participants are required to "share their culture" with hotel guests and staff, the record also shows that the petitioner assigns its program participants to traditional hospitality industry roles, such as front desk positions or food and beverage positions. The petitioner 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. However, other evidence in the record confirms that the petitioner's

program participants do in fact perform the same basic job functions as "regular" hotel staff. For example, 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. If an employee is working at the front desk beside other front desk clerks, and performing the regular duties of a front desk clerk, then the employee may reasonably be considered a front desk clerk even if he or she is wearing a "culturally proud nametag" or answering questions about his or her culture during the check-in process. The beneficiaries may have additional duties not performed by "regular employees" but it appears that they are expected to fully perform the duties of their hotel positions while on duty. The petitioner's claim that the petitioner's program participants are merely trainees primarily engaged in "observing" front desk or food and beverage operations is not adequately supported by the evidence. The evidence of record shows that the participants are paid by the petitioner, rather than by the host property. However, as discussed above, they appear to be paid commensurate with their actual duties as hotel employees, rather than at a uniform rate as "Cultural Program Associates."

Overall, the evidence in the record fails 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 the petitioner 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 the petitioner's cultural component is wholly designed to exhibit or explain any of these aspects of Indian or Chinese culture as part of a structured program in place at each of the nine possible work locations. As noted by the director, 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.

The petitioner's Structured Training Program indicates that program participants receive "training on effective communication and initiating dialogues with the American Public" on Day 3 of their Cultural Exchange Program training, one of six topics covered during that day's session. The beneficiaries could not be considered highly trained in this area, and the AAO finds that 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 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 restaurant servers, for example, would realistically spend only

20 percent of their time performing the regular duties of the position to which they are assigned and for which they are compensated.

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, lectures, and language and culinary classes, the petitioner has not submitted evidence that any of these more structured means of cultural exchange have taken place at the host properties, or that the beneficiaries even possess the qualifications to deliver these more in-depth cultural presentations. The petitioner claims that the participants take part in daily "manager's receptions," at the host properties, however, as noted above, 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 prior program participants have engaged in more formal and structured cultural events such as "cultural week" events, and other programs documented in the record. Contrary to the director's observations, the evidence of record does establish that such events are open to the public, and carried out by the petitioner's employees. However, these major 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. As noted above, the record is lacking information regarding the specific hotel properties that will receive the beneficiaries, and as such does not contain specific evidence pertaining to the implementation of the petitioner's program at all of the possible worksites.

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 the petitioner'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.[1] However, where an

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[1] Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether

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). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Based on the foregoing discussion, it must be concluded that the petitioner failed to establish that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3) because the petitioner failed to establish that the beneficiaries would be engaged in employment or training of which the *essential element* is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the aliens' countries of nationality. The presence of the foreign employees may contribute to some guests' overall experience at the participating hotels and resorts, and the program participants will host some cultural events that are open to the American public. However, based on the evidence submitted, it is reasonable to conclude that the participants will be spending the majority of their time on a daily basis performing the standard duties of hotel or restaurant workers, during which periods their cultural interaction with hotel guests will be primarily limited to informal and unstructured cultural exchanges.

We acknowledge the petitioner's reliance on *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 859 (9th Cir. 2004) in support of its assertion that the director abused his discretion by holding the petitioner to a higher standard than any other similarly-situated petitioners.[2] The petitioner claims that other qualified Q-1 employers, such as Disney, place their Q-1 participants in similar employment positions. 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).

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something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); *see also id* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

[2] In *Maravilla Maravilla v. Ashcroft,*, the United States Court of Appeals for the Ninth Circuit determined that the Board of Immigration Appeals' (BIA's) denial of the petitioners' motions to reopen their applications for cancellation of removal, based on ineffective assistance which they allegedly received from their counsel in original proceedings, constituted abuse of discretion, where BIA failed either to assess whether counsel's performance was deficient or to explain why no such inquiry had been conducted, and where its "prejudice" inquiry was based on an improperly high standard.

The AAO does not have before it an approved Q-1 petition filed by Disney and is thus unable to determine whether such a petition involves similar facts.[3]

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010)(citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

We acknowledge that extensive documentary evidence has been submitted in support of the petition. The majority of this evidence was submitted to demonstrate that the petitioner's past program participants have advertised and implemented cultural events that are open to the public during the course of their stay. However, as discussed above, certain critical information, such as information regarding the specific work locations of the beneficiaries and the implementation of the petitioner's program at each proposed work location, has not been provided, while the petitioner's description of the beneficiaries' duties and responsibilities is not entirely credible due to conflicting evidence in the record. Therefore, we find that the director was justified in denying the petition.

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 AAO acknowledges that USCIS has previously approved other Q-1 nonimmigrant petitions filed by the petitioner. The prior approval does 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

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[3] We note that Disney's Epcot Theme Park, which was specifically referenced by the petitioner, operates a World Showcase which features country-specific areas highlighting the architecture, cuisine, music, traditional dress, and other aspects of the culture of several countries. Each area is staffed entirely by nationals of the featured country. The petitioner's program, by contrast, seeks to place a handful of beneficiaries of different nationalities in a typical hotel lobby or restaurant, and does not appear to be fully comparable despite the fact that both programs use the hospitality industry as a vehicle for the cultural exchange program.

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.

As noted above, 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.

If the petitioner routinely submits the same evidence in support of its Q petitions, then it is likely that prior petitions were approved without sufficient evidence of eligibility in the record, and the 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).

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.