

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

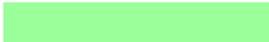


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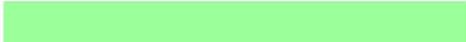


Date: **JUN 24 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

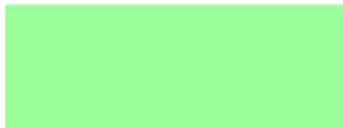
IN RE:

Petitioner: 

Beneficiaries: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks designation of its program as an international cultural exchange program and classification of the beneficiary as an international cultural exchange visitor 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, a non-profit, German-language immersion preschool, seeks to employ the beneficiary as a preschool teacher for a period of fifteen (15) months.¹

The director denied the petition, finding that the petitioner's program was not a qualifying international cultural exchange program pursuant to section 101(a)(15)(Q)(i) of the Act and the provisions at 8 C.F.R. § 214.2(q)(3). The director found the petitioner did not establish: (1) that it operates an international cultural exchange program that is accessible to the public; (2) that it operates a program with an essential cultural component; or (3) that the beneficiary will be employed primarily to share the culture of her native country of Germany. The director concluded that the petitioner's main purpose is to provide academic curriculum to preschoolers enrolled in its preschool and "not to improve the American public's knowledge of German art, literature, history, language and tradition."

On appeal, counsel for the petitioner asserts that the petitioner submitted evidence that it meets all requirements for program approval pursuant to 8 C.F.R. § 214.2(q)(3)(iii). Counsel asserts that the petitioner offers a structured cultural program that includes community outreach activities and a German-immersion learning environment, and not merely an academic curriculum for preschoolers as stated in the director's decision.

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

¹ The petitioner previously filed an I-129 Petition on behalf of the beneficiary on July 1, 2008. The petition was denied on July 25, 2008.

individually identified nonimmigrant aliens to be admitted in Q-1 status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The international cultural exchange visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

* * *

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

(A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component.* The international cultural exchange visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

The issue to be addressed in this proceeding is whether the petitioner established that its proposed program is eligible for designation by United States Citizenship and Immigration Services (USCIS), under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. The requirements for program approval are set forth at 8 C.F.R. § 214.2(q)(3)(iii).

The petitioner filed the nonimmigrant petition on August 25, 2008, indicating its intent to hire the beneficiary for the position of "Preschool Teacher."

In a letter dated August 20, 2008, the petitioner explained that its preschool was incorporated in 2004 for the purpose of providing "a German immersion learning environment with community outreach." The petitioner stated that the school's Board of Directors later passed a resolution stating that the goal of the school "is to provide a well-rounded learning environment for all who would like to participate in a multi-cultural learning experience."

The petitioner stated that, as part of its community outreach, it strives to inform the public of the school and its services by posting flyers in churches in schools, by providing open houses that are open in interested members of the public, and by holding festivals and fundraisers that are open to the community. With respect to the public accessibility of the program, the petitioner further states:

As the only German-speaking preschool in San Diego, [the petitioner] strives to be a cultural resource for the community. Interest in [the petitioner's school] has rapidly grown and has become a first choice of parents wishing to send their children on to [redacted], a highly ranked public elementary school with a German language immersion program.

The petitioner described the cultural component of its program and the proposed employment as follows:

As a German national and as an employee of [the petitioner], [the beneficiary] will be required to speak and teach German, the language of her country. As a German language immersion preschool, German is the primary language spoken during school hours. Since the majority of the students do not come from German speaking households, [the beneficiary] has the ability to communicate in both English and German.

[The petitioner] intertwines the teaching of German culture into its General Curriculum. . . . Each month's theme has a tie-in to German customs and traditions. [The petitioner] employs several methods to convey the culture in its planned daily activities which includes German books, fairy tales, songs, and holiday rituals. . . . The school plans to take advantage of [the beneficiary's] cultural background and integrate specific German cultural lessons into its curriculum to teach preschoolers the historical and cultural significance of various German and its traditions [sic]. This new Wednesday Special Program will emphasize Germany's history, customs, traditions, language and way of life as presented through circle work, role-playing, music, and dance. . . . Each Cultural Lesson will culminate in a Festival, which will include parent participation.

Finally, with respect to the program's work component, the petitioner stated:

[The beneficiary] will be employed as a preschool teacher in a German immersion preschool. The school provides a *General Curriculum*, which allows for both a traditional curriculum and a cultural curriculum during the school year. . . . The traditional curriculum includes German language, science, social skills, movement, etc. The cultural curriculum includes songs, stories and German cultural themes. . . . The teachers then devise their own weekly lesson plans that incorporate the current German Cultural Theme with the traditional curriculum.

In addition to the General Curriculum, [the petitioner] has implemented a Wednesday Special Program which focuses on Specific Cultural Lesson Plans, such as *Life in Medieval Germany*, *Harvest Festival in Germany*, etc. . . . The specific Cultural Lesson Plans also tie into the cultural themes outlined in the General Curriculum.

In addition to [the beneficiary's] regular teaching responsibilities, she will be primarily responsible for the Special Wednesday Program. Her duties will be to develop and teach both staff and students about the current Cultural themes as outlined by the cultural lesson plans. Her employment with the school utilizes [the beneficiary's] experience as a teacher to introduce the German cultural heritage through the cultural programs to the children.

The petitioner indicated that the beneficiary will be teaching one of the school's two-year old classes and submitted a detailed description of the beneficiary's proposed position as a full time teacher and "Lead Teacher Cultural Exchange Program."

In support of the petition, the petitioner provided a copy of a flyer and Open House invitation, promoting the school's program designed to "expose children ages 2 to pre-Kindergarten to the German language and culture" and "to promote cognitive, social, emotional and physical growth of the whole child." The petitioner also provided a flyer for the school's ' [redacted] ' or children's Mardi Gras, held in January 2008, and its spring fundraiser held in May 2008.

The petitioner also provided its general curriculum and "Guidelines for International Cultural Exchange Program" for the 2008-2009 school year, which indicates that topics will include German traditions and festivals, the German countryside, the seasons in Germany, the fauna and flora of Germany, historical times and occurrences, Castles, Palaces and Mansions, traditional fairy tales, "The Legendary World of Germany," weights and measures and traditional German food. The petitioner submitted copies of general lesson plans for each class, and copies of two cultural lesson plans, along with a daily schedule.

The director determined that the petitioner's initial evidence was insufficient to establish that it has a qualifying international cultural exchange program pursuant to 8 C.F.R. § 214.2(q)(3)(iii). Accordingly, the director issued a request for additional evidence on September 2, 2008. The director instructed the petitioner to submit: (1) evidence showing that the petitioner's international cultural exchange program is accessible to the public; (2) evidence showing that the petitioner's international cultural exchange program has a cultural component that is an essential and integral part of the beneficiary's proposed employment; and (3) evidence showing that the petitioner's international cultural exchange program has a work component that is not independent of the program's cultural component. The director advised the petitioner that "[i]t appears the school's main purpose is to provide academic curriculum and not to improve the American' public's knowledge of German art, literature, history, language, and tradition." The director further noted that the program is accessible only to the students who attend the school.

In a response dated October 1, 2008, counsel for the petitioner emphasized that the petitioner's articles of incorporation state the school's purpose is to be "a German immersion-learning environment with community

outreach." Counsel explained that community outreach and accessibility to the public are important to the school because "it allows the public to view the school as a community resource for German culture, gives the children the opportunity to share what they have learned, and permits the school to fundraise."

In addressing the cultural component of the petitioner's program, counsel stated:

The goal of the school is to become a German cultural resource for San Diego. Each festival has an actual German counterpart, which is steeped in tradition. By sharing the history of each festival with the attendees, the community gains an awareness of the richness of the German culture. . . . The faculty and students of [the petitioner's school] are the greatest ambassadors of German culture whether they are of German descent or not. Most of the festivals involve German participation. [REDACTED] has the requisite costumed parade. Harvest Festival/Oktoberfest involves a traditional harvest dance. [REDACTED] showcases traditional festival songs. Weinfest will not have student participation but will have faculty participation. This festival will explore the various wine regions of German, the grape varieties, history and wine culture of the country.

With respect to the work component of the program, counsel asserted that the beneficiary is required to "develop the special events and the cultural theme programs and teach the students and staff the history of the cultural theme." Counsel asserted that the beneficiary's work is not independent of the cultural component, and that her duties include preparing special events for students and parents, as well as participating in public relations/community outreach by contacting venues, creating flyers, interacting with event attendees and encouraging participation in the event activities.

Finally, counsel asserted that the petitioner would meet the requirements of a Cultural Exchange Program even without its community outreach program. Counsel emphasized that the regulations at 8 C.F.R. § 214.2(q) recognize schools as appropriate locations for cultural exchange programs. Furthermore, counsel noted that the school is designed for "the segment of the population sharing a common cultural interest which is of preschool age," and thereby exposes "a segment of the American public" to German culture. Counsel stated that "not all programs are designed to meet the requirements of every age group or financial ability."

The director denied the petition on October 10, 2008, concluding that the petitioner failed to establish that the school "provides the 'cultural sharing' that is required by the statute, wherein the public is exposed to the aspects of a foreign culture." The director further observed that the petitioner did not demonstrate that it has a program designed to improve the American public's knowledge about German art, literature, history, language and tradition. Rather, the director determined that the school's main purpose is to provide an academic curriculum, and that its cultural components are not available to the general public.

On appeal, counsel for the petitioner asserts that the content of the director's decision suggests that she did not review the evidence submitted in support of the petition. Counsel asserts that the director ignored the evidence provided with respect to the school's community outreach programs, and failed to even acknowledge the German immersion learning environment of the preschool, and instead characterized the school as a purely academic program which emphasizes teaching "language arts, math concepts and science concepts."

Upon review, counsel's assertions are persuasive. The AAO will withdraw the director's decision. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director's decision in this matter was overly-broad, with no specific reference to or analysis of the substantial documentation in the record.

After careful review of the record, the AAO concludes that the evidence is sufficient to establish that the petitioner's program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3).

The regulation at 8 C.F.R. § 214.2(q)(3)(iii)(A) requires that the petitioner's international cultural exchange program 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.

The petitioner's preschool is designed for the sole purpose of sharing the German language and culture to a segment of the public sharing a common cultural interest, and the evidence submitted shows that the petitioner makes a meaningful effort to expose the larger community to the German culture through community outreach programs that extend beyond the student body and their families. Significantly, the petitioner markets its school and its program to the American public as a German cultural and language program designed specifically for pre-school aged children and seeks to attract families who are seeking just such a program for their children. Access to the school-based program may be limited by the petitioner's ability to accommodate students above its maximum enrollment, but the petitioner's community outreach programs are open and accessible to the public in general. The AAO is satisfied that the school-based program described in the instant petition is sufficiently accessible to the public.

The AAO notes, however, that despite the reference to schools in the regulations at 8 C.F.R. § 214.2(q)(3)(iii)(A), the fact that a petitioner claims to have a cultural exchange program that takes place in a school will not necessarily establish that the petitioner meets the public accessibility requirement. For example, a public high school seeking to hire a Q-1 beneficiary solely to teach language classes in his or her native language as part of the general secondary school foreign language curriculum would likely not meet this requirement unless there were unusual circumstances present. The AAO considers the totality of the evidence including the type of establishment(s) used by the petitioner, whether the American public is made aware of the program, and how access to the program may be obtained. If the petitioner operates a program that is not advertised in anyway to the public, it will generally not be considered publicly accessible, regardless of the location.

The regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B) requires that the program's cultural component be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the international cultural exchange visitor's country of nationality. The purpose of the petitioner's school and program is to provide an age-appropriate German language and culture curriculum for pre-school aged children, and to provide a community outreach program that exposes a larger segment of the public to German traditions. A

person enrolling a child in the program would reasonably expect their child to be exposed to German language and culture on a daily basis as part of a structured curriculum. The majority of the school's public events coincide with German holidays or traditions and have a significant cultural component. Therefore, the petitioner has established that it meets this requirement.

Finally, the AAO is satisfied that the beneficiary will be employed in a structured program with a cultural component that is an essential and integral part of her employment. 8 C.F.R. § 214.2(q)(3)(iii)(C). The beneficiary's primary responsibility will be to immerse her students in German language and culture as part of a structured curriculum, while providing ancillary child care duties that are inherent to teaching very young children. The beneficiary's duties with respect to planning and participation in the petitioner's community outreach program are also structured and well-defined, and appropriate to this classification.

For the above reasons, the petitioner has established that its proposed international cultural exchange program meets the requirements for program approval set forth at 8 C.F.R. § 214.2(q)(3)(iii). Accordingly, the director's decision will be withdrawn and the petition will be approved. 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 been met.

ORDER: The appeal is sustained. The petition is approved.