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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF F-H-M-

DATE: JULY 21, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner seeks to classify the Beneficiary as international cultural exchange visitor. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(Q), 8 U.S.C. § 1101(a)(15)(Q). This Q-1 classification makes nonimmigrant visas available to individuals who participate in an international cultural exchange program, approved by the Department of Homeland Security (DHS), to provide practical training, employment, and the sharing of the history, culture, and traditions of their country of nationality. The Petitioner, a non-profit Holocaust museum, seeks to employ the Beneficiary, an Austrian national, as a resource/tour coordinator for a period of 15 months.<sup>1</sup>

The Director denied the petition concluding that the Petitioner's program is not eligible for designation as an international cultural exchange program under section 101(a)(15)(Q) of the Act, pursuant to the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). Specifically, the Director concluded that the Petitioner did not establish that it operates an international cultural exchange program that has a qualifying cultural component, and that the work component of the Beneficiary's assignment would not be independent of the cultural component of the program but would serve as a vehicle to achieve the objectives of the cultural component, as required by the regulation at 8 C.F.R. §§ 214.2(q)(3)(iii)(B) and (C). The Director also found reason to question whether "the [B]eneficiary will be employed and compensated as a full-time employee."

The matter is now before us on appeal. In support of the appeal, the Petitioner submits a brief, a letter, additional evidence, and copies of previously submitted documentation. The Petitioner asserts that the Director erred in determining that the Beneficiary is not eligible for the classification sought.

Upon *de novo* review, we will dismiss the appeal.

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<sup>1</sup>The record shows that the Beneficiary recently completed a one-year internship with the Petitioner in a program sponsored by the [redacted] called [redacted] in which interns may volunteer, in lieu of military service, in organizations focused on Holocaust remembrance.

## I. LAW

Section 101(a)(15)(Q) of the Act authorizes nonimmigrant status for participants in a DHS-approved international cultural exchange program. The implementing regulation at 8 C.F.R. § 214.2(q) establishes the process by which DHS evaluates both the proposed cultural program and the prospective Q nonimmigrants. Under 8 C.F.R. § 214.2(q)(3)(iii), an international cultural exchange program must meet 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.

In addition, the regulation at 8 C.F.R. § 214.2(q)(4)(i) states:

*Documentation by the employer.* To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

- (A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;

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- (B) Has designated a qualified employee as a representative who will be responsible for administering the international exchange program and who will serve as a liaison with the Immigration and Naturalization Service;
- (C) Is actively doing business in the United States;
- (D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and
- (E) Has the financial ability to remunerate the participant(s).

## II. ANALYSIS

### A. Accessibility to the Public

The first issue to be addressed in this proceeding is whether the Petitioner established that its proposed program is eligible for designation by DHS, under section 101(a)(15)(Q) of the Act, as an international cultural exchange program. The Director determined that the Petitioner's program is accessible to the American public in satisfaction of 8 C.F.R. § 214.2(q)(3)(iii)(A). We concur with this finding. The Petitioner is a Holocaust museum, designed to "collect, preserve and make available to the public the historical record and artistic and literary interpretation of the Holocaust and other genocides," and to teach "the members of all races and cultures the inherent worth and dignity of human life in order to prevent future genocides." The Petitioner's programs are designed for, and open to, the American public and include cultural events and programs such as teaching seminars, lectures, commemorative events, and educational programs that bring classes to the museum and speakers to schools.

The regulation uses examples to set the limits of what is acceptable and unacceptable with respect to public access. As an example of sufficient public access, the regulation specifically mentions that the cultural exchange program may take place in a museum. 8 C.F.R. § 214.2(q)(3)(iii)(A). As examples of insufficient public access, the regulation cites "[a]ctivities that take place in a private home or an isolated business setting." *Id.* The Petitioner's program involves a level of public access that surpasses these negative examples. There is ample evidence to support a finding that the Petitioner's facility and educational programs are valuable and widely-used public resources across many segments of the [REDACTED] community. The Petitioner has also established that its programs and accompanying public activities are well-organized, structured, and well-publicized within the surrounding metropolitan area. Based on the foregoing, we find that the Petitioner's program provides accessibility to the public, as required by 8 C.F.R. § 214.2(q)(3)(iii)(A).

### B. The Cultural Component

In order to satisfy the requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(B), the petitioner must establish that its international cultural exchange program has a cultural component which is an essential

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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.

Regarding the proposed position, the Petitioner's initial evidence included a job description, stating that the position of Resource and Tour Coordinator "promotes the Florida Holocaust Museum and its resources to schools, district administrators and teachers in the public and private schools of the counties of responsibility," "[h]elps with updates of the teaching trunk content," and "[h]andles teaching trunk bookings, inventory, and shipping arrangements as well as school group bookings." The job description also indicated that the position requires the participant to regularly use the Petitioner's "trunk reservation module, resource module, and reporting tools," and to "[s]erve as a docent when needed." The record contains information about the Petitioner from *Wikipedia*, an online encyclopedia, explaining that, "[a]s part of [the Petitioner's] education program, teachers can borrow Teaching Trunks with material for teaching about the Holocaust . . . specialized for various ages from elementary-level students to high-school students."

In a request for evidence, the Director found that the Beneficiary's proposed job duties are "duties to facilitate [the Petitioner's] day-to-day museum operation," and that the Petitioner did not demonstrate that the Beneficiary "would be involved in sharing Austrian culture." The Director instructed the Petitioner to submit, *inter alia*, additional evidence regarding the Beneficiary's proposed duties under its cultural exchange program. In response, the Petitioner provided a supplemental job description that listed the duties required of the Beneficiary as a docent, including "speaking to students and adults about the [redacted] program . . . and . . . Austrian history, including how the Holocaust is taught in Austrian schools." It also included additional duties for which the Beneficiary was responsible "[a]s an Austrian citizen and native German-speaker," including contacting "German-speaking people in order to gain more information regarding artifact and testimony we have at the [petitioning museum]," translating "German documents and artifacts," and working with the next Gedenkdienst volunteer." The supplemental job description did not provide a breakdown of the Beneficiary's duties indicating those that are performed daily, those that are performed weekly, and those that occur with less frequency.

The Director denied the petition, concluding that the Petitioner did not establish that its program has a cultural component which is an essential and integral part of the Beneficiary's proposed employment and is designed, on the whole, to exhibit or explain Austrian culture. The Director found that the Beneficiary's sharing of the culture of his country of nationality would be incidental to his primary duties in preparing and scheduling the display of educational materials about the Holocaust. In addition, the Director determined that the Petitioner has not explained how additional activities in the expanded job description, such as interacting with German-speaking visitors and translating German documents, involve the sharing of Austrian culture.

In its appeal brief, the Petitioner avers that the Beneficiary's proposed duties will involve sharing Austrian culture with school groups, and that, as a Resource and Tour Coordinator, he will be responsible for that portion of the tour in which school groups are greeted and prepared. It states that

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the Beneficiary “leads a discussion of the topics and materials they have studied and introduces them to some of the crucial information pertaining to the subject matter taught during a field trip” and “specifically talks about his cultural heritage and the way the Holocaust is taught in the Austrian school system.” The Petitioner emphasizes that during such interactions the “[s]tudents also learn about Austria outside of the Holocaust context to broaden their knowledge and see present-day Austrians as individual human beings . . . rather than categorize them as a country and nation involved in the Holocaust as a whole.” The Petitioner explains that “[b]ased on the historical role Austria played during the Holocaust, having a staff member who can enhance our understanding of the ways this difficult history is taught and processed there is invaluable.”

In an additional letter on appeal, the Petitioner emphasizes that the supplemental job description “describes the essential discussion about the history of Austria and its role during the Nazi Regime, as well as educational aspects in the German speaking area before, during and after the Second World War, which need to be discussed with each visiting school group by [the Beneficiary].” Upon review, the job description does not contain this summary of the content of the Beneficiary’s culture-sharing. The Petitioner states that “[t]his cultural exchange and discussion about Austria takes place during the introductory portion of each school group visit . . . and more extensive examinations of the subject matter take place during tours led by [the Beneficiary].” However, the record does not contain structured lesson plans, copies of teaching trunk materials, or other corroborating evidence establishing that an essential and integral part of the Beneficiary’s employment as a cultural exchange resource and tour coordinator involves introducing museum patrons and students to Austria’s attitude, customs, history, heritage, philosophy, or traditions.

While the supplemental job description indicates that the Beneficiary may occasionally act as a docent and share the culture of Austria during museum tours, the record does not support a conclusion that the Beneficiary consistently performs such duties on a day-to-day or weekly basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The Petitioner also submits photographs of the Beneficiary introducing the Petitioner’s Teaching Trunk program to Nazi hunter [REDACTED] during his VIP tour of the museum and working with museum visitors, as well as complimentary evaluations of his work by several tour groups, but this evidence does not mention or reflect that he exhibits or explains Austrian culture.

We agree with the Director’s determination that the Petitioner has not established that its international cultural exchange program has a qualifying cultural component. The primary purpose of the Petitioner’s program is, as stated by the Petitioner, to provide the public with the historical record and artistic and literary interpretation of the Holocaust and other genocides, and not to exhibit or explain the attitude, customs, history, heritage, philosophy or traditions of the participant’s country of nationality. The majority of the Beneficiary’s stated job duties involve the teaching trunks, but the Petitioner has not established how the instructional materials that comprise the teaching trunks are designed to exhibit or explain the attitude, customs, history, heritage and traditions of the Beneficiary’s home country. While there may be some measure of culture-related activity based on the

historical role Austria played during the Holocaust, the Petitioner has not established that the program as a whole is designed to provide an opportunity for such cultural sharing, or that an essential element of the Beneficiary's employment would be the sharing of Austria's culture. Based on the foregoing discussion, the Petitioner has not established that its international cultural exchange program has a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training, and 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. 8 C.F.R. § 214.2(q)(3)(iii)(B).

#### C. The Work Component

Lastly, the program beneficiary's employment or training in the United States must be tied to the program's cultural component. The beneficiary's work may not be independent of the cultural component of the international cultural exchange program, but 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. 8 C.F.R. § 214.2(q)(3)(iii)(C). The Director determined, based on the Petitioner's representations, that the Beneficiary will devote the majority of his time in coordinating materials about the Holocaust rather than in explaining the attitude, customs, history, heritage, philosophy, or traditions of his country of nationality.

We concur with the Director's determination that the Petitioner has not shown that the Beneficiary's work serves as a "vehicle" to achieve the program's cultural objectives and that such objectives will "result from" his work. The evidence reflects that the Petitioner is seeking to employ the Beneficiary to organize and schedule the use of educational materials about the Holocaust and schedule tours of the museum. The submitted evidence does not establish that the Beneficiary's work will serve as a vehicle to transmit Austrian language, culture, customs, heritage, traditions, etc. to students and other museum visitors. 8 C.F.R. § 214.2(q)(3)(iii)(C).

For the above reasons, the Petitioner has not 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)(B) and (C). Accordingly, the appeal will be dismissed.

#### D. The Beneficiary's Wage

The Petitioner indicated on the petition that the Beneficiary will receive an annual salary of \$27,000. On the Q-1 Classification Supplement, the Petitioner certified that the Beneficiary was qualified to perform the work described in the petition and that it will offer the Beneficiary wages and working conditions comparable to those accorded local domestic workers similarly employed. 8 C.F.R. §§ 214.2(q)(4)(i)(D) and (q)(4)(ii)(B). The Director found that the Petitioner had the financial ability to pay the proffered salary. 8 C.F.R. § 214.2(q)(4)(i)(E).

In denying the petition, the Director found reason to question whether "the [B]eneficiary will be employed and compensated as a full-time employee." Citing to the Petitioner's 2013 tax return, the

Petitioner determined that “nineteen (19) people receiving payment as [the Petitioner’s] employees . . . were managerial and executive employees,” while “[t]he others were volunteers.” On appeal, the Petitioner argues that the Director incorrectly characterized its submission, which shows that, while it does not compensate its Board of Directors and Advisory Committee, it does have paid employees. The Petitioner explains that it has approximately 20 paid employees, including 13 full-time and 7 part-time workers, comprised of its executive director, department heads, security personnel and education/administrative/gift shop/maintenance staffs. Upon review, the Director’s determination on this issue is not supported by the evidence and, accordingly, is hereby withdrawn.

### III. CONCLUSION

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)(iii)(B) and (C). Consequently, the Beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(Q) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-H-M-*, ID# 17419 (AAO July 21, 2016)