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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



Public Copy
JUL 23 2001

File: EAC-00-217-50698 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER: Self-represented

This petition does not fall to
prevail clearly and
convincingly.

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is the Embassy of Spain. It seeks to employ four of its nationals temporarily in the United States as language and cultural assistants at different schools in the United States, and to classify the beneficiaries as international cultural exchange visitors pursuant to section 101(a)(15)(Q) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1101(a)(15)(Q).

The director denied the petition determining that the petitioner would not be operating an international cultural exchange program qualifying for Q classification. The director found that the beneficiaries primarily would be Spanish language teachers at private schools and that such activity would not be open to the general public as contemplated in the pertinent provisions.

On appeal, the petitioner explained, in pertinent part, that the beneficiaries would act as assistant teachers, rather than teachers, and would be employed by the government of Spain.

Section 101(a)(15)(Q) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(Q), 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.

Service regulations pertaining to international cultural exchange visitors set forth in detail the requirements for classification as a Q nonimmigrant and are listed, in pertinent part, for the convenience of the petitioner.

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

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 cultural 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 cultural 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 cultural 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 cultural visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

8 C.F.R. 214.2(q)(4) provides:

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

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

(B) Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as 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).

8 C.F.R. 214.2(q) (1) defines, in pertinent part:

Qualified employer means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the Attorney General in accordance with the provisions of § 101(a) (15) (Q) of the Act.

Doing business means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

At issue is whether the program proposed by the petitioner is eligible for designation by this Service, on behalf of the Attorney General, under § 101(a) (15) (Q) of the Act, as an international cultural exchange program.

In the statement furnished on appeal, the petitioner explained that it has a Memorandum of Understanding with 25 state departments of education or individual school districts to provide language and cultural assistants for a one-year period. The instant petition

represents four of the sixteen anticipated participants in the program. The petitioner further explained:

The Language and Cultural Assistants are not contracted as teachers by any U.S. organization, nor do they receive any payment from any U.S. school, university or district for their participation in this program. They receive a scholarship from the Ministry of Education and Culture of Spain for the specific purpose of acting as Language and Cultural Assistants at U.S. schools and universities;

After careful review of the record, it must be concluded that the proposed program is not an international cultural exchange program for the purpose of classifying an employee as a Q-1 international cultural exchange visitor.

First, a qualifying petitioner must be a United States employer doing business in the United States as contemplated under the pertinent regulations. The beneficiaries in this matter would be employees of the government of Spain. The government of Spain is not considered a United States employer doing business in the United States as contemplated under the pertinent regulations.

Second, the international cultural exchange program must be accessible to the American public. The act of working as a teaching assistant in a school does not involve the type of public access contemplated by the regulations. While "schools" are listed as an example of a location for public accessibility, it must be concluded that the reference contemplates events at a school that would be open to the public. The classroom activities in which the beneficiaries would be involved would not be open to the public. The petitioner's cultural exchange program would be restricted to the students of the participating United States schools and would not accommodate the level of public access envisioned by the international cultural exchange visitor provisions.

As noted by the director, the Service does not question the value of the proposed program or the qualifications of the beneficiaries selected to participate in the program. The denial of this petition is without prejudice to the petitioner pursuing its goals of cultural exchange through alternate visa classifications.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.