U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

D10

[redacted]

Public Copy

File: EAC-00-172-50149 Office: Vermont Service Center Date: MAY 22 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 a bakery. It seeks to employ the beneficiary temporarily in the United States as a pastry chef, and to classify the beneficiary as an international cultural exchange visitor pursuant to § 101(a)(15)(Q) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1101(a)(15)(Q). The director determined that the beneficiary would be not be employed in a qualifying international cultural exchange program.

On appeal, counsel argues that the beneficiary will present demonstrations of pastry preparation on its premises as a vehicle to teach members of the public about Greek culture. The beneficiary will also participate in off-site events such as folk festivals. Counsel asserts that the petitioner's business is clearly accessible to the public, is similar to an exhibit at Disney World's EPCOT Center, and qualifies as a cultural exchange program under the pertinent regulations.

§ 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 at 8 C.F.R. 214.2(q)(1)(iii) pertaining to international cultural exchange visitors define, in pertinent part:

> *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.
>
> *International cultural exchange visitor* means an alien who has a residence in a foreign country which he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

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.

8 C.F.R. 214.2(q)(2) further provides:

Admission of international cultural exchange visitor--(i) *General.* A nonimmigrant alien may be authorized to enter 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. The period of admission is the duration of the approved international cultural exchange program or fifteen (15) months, whichever is shorter. A nonimmigrant alien admitted under this provision is classifiable as an international cultural exchange visitor in Q-1 status.

8 C.F.R 214.2(q)(3) further 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 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.

(iv) *Requirements for international cultural exchange visitors.* To be eligible for international cultural exchange visitor status, an alien must be a bona fide nonimmigrant who:

(A) Is at least 18 years of age at the time the petition is filed;

(B) Is qualified to perform the service or labor or receive the type of training stated in the petition;

(C) Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and

(D) Has resided and been physically present outside of the United States for the immediate prior year, if he or

she was previously admitted as an international cultural exchange visitor.

8 C.F.R. 214.2(q)(4) further 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).
>
> (ii) *Certification by petitioner.* (A) The petitioner must give the date of birth, country of nationality, level of education, position title, and a brief job description for each international cultural exchange visitor included in the petition. The petitioner must verify and certify that the prospective participants are qualified to perform the service or labor, or receive the type of training, described in the petition.

At issue is whether the petitioner is operating an international cultural exchange program that is eligible for designation by this Service under § 101(a)(15)(Q) of the Act and whether the beneficiary may be classified as an international cultural exchange visitor.

The petitioner is a small bakery specializing in ethnic Greek products. It claims six employees. The beneficiary is a native and citizen of Greece, over 18 years of age, trained as a pastry chef. In support of the petition, the petitioner claimed that it is open to the public and that the beneficiary will conduct seminars and demonstrations on its premises and at area folk festivals promoting Greek culture.

After careful review of the record, it must be concluded that the petitioner does not operate a international exchange program and is not a qualifying employer for the purpose of classifying an employee as a Q-1 international cultural exchange visitor. The petitioner essentially is a neighborhood ethnic bakery. It is not a business designed to expose the American public to a foreign culture as part of a structured program. The cultural exhibitions at the EPCOT Center referred to by counsel are highly structured cultural exhibitions that may operate a restaurant as an integral part of that exhibition. This is clearly distinguished from an ethnic restaurant that promotes its products in cooking demonstrations and folk festivals. Moreover, as noted by the director, the folk festivals are not part of the petitioner's business, but are events sponsored by other organizations or entities and therefore cannot qualify as an international cultural exchange program of the petitioner.

Clarification is available in the supplementary information to the current regulations at 8 C.F.R. 214.2(q), published at 57 Fed. Reg. 55056, 55058 (November 24, 1992):

> The Q visa provision is designed to foster "cultural exchange." The statute uses precisely this term and requires that a cultural exchange program have the purpose of "providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality." This language suggests that Congress envisioned a sharing of culture more widespread and accessible than the private cultural exchanges suggested by the commenters. It also suggests that the culture-sharing aspect of the status is the feature distinguishing this from nonimmigrant classifications that are tied solely to employment. Based on this language, the Service has retained in the final rule the requirements that a Q cultural exchange program must have structured public activities with specific culture-sharing goals, and that the cultural exchange visitor's employment or training must serve the cultural objectives of the program. Where training or employment is the primary reason for an alien's visit to this country, the alien should seek a visa classification that is appropriate for temporary workers, such as H-1B, H-2B, or H-3.

The Service is unable to view the petitioning bakery as a cultural organization having a qualifying international cultural exchange program. The petitioner is simply an ethnic bakery engaged in the business of selling its products, not primarily in promoting cultural exchange. The petitioner may be an active participant in the local Greek-American community and events sponsored within that community. The petitioner has also demonstrated that the

beneficiary is a qualified pastry chef from Greece. However, it cannot be concluded that the petitioner operates an international cultural exchange program within the meaning of § 101(a)(15)(Q) of the Act or that the beneficiary will be coming to the United States primarily to share the history, culture, and traditions of Greece. As employment is the primary reason for the beneficiary's visit to this country, the alien should seek a visa classification that is appropriate for temporary workers.

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.