U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-, LLC

DATE: DEC. 5, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks to classify the Beneficiary as an international cultural exchange visitor. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(Q), 8 U.S.C. § 1101(a)(15)(Q). Q-1 classification is for 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 restaurant group, seeks to employ the Beneficiary, a Spanish national, as a chef (specialty cuisine consultant) for a period of 15 months.

The Director of the Vermont Service Center initially approved the nonimmigrant visa petition. The Director subsequently revoked the approval of the petition on notice pursuant to 8 C.F.R. § 214.2(q)(9)(iii)(D), 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, based on the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). The matter is now before us on appeal. In support of the appeal, the Petitioner submits a brief, maintaining that the Director erred in determining the Beneficiary is not eligible for the classification sought.

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

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.

Further, the regulation at 8 C.F.R. § 214.2(q)(9)(iii) provides in pertinent part that the service center director shall send the petitioner a notice of intent to revoke an approved Q-1 classification petition if he or she finds that:

(A) The international cultural exchange visitor is no longer employed by the petitioner in the capacity specified in the petition; or if the international cultural exchange visitor is no longer receiving training as specified in the petition;

(B) The statement of facts contained in the petition was not true and correct;

(C) The petitioner violated the terms and conditions of the approved petition; or

(D) The Service approved the petition in error.

II. ANALYSIS

A. Introduction

The Director, Vermont Service Center, approved the nonimmigrant petition. The Director found, and the record demonstrates, that the Petitioner is a qualified employer and that the Beneficiary is eligible for Q-1 status. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition based on her determination that the Petitioner's proposed *program* is not eligible for designation as an international cultural exchange program. The Petitioner was granted thirty-three (33) days in which to submit additional evidence in rebuttal to the proposed grounds for

revocation, and submitted a timely response. After reviewing the Petitioner's response to the NOIR, the Director revoked the approval of the petition for the reasons set forth in the NOIR. The matter is now before us on appeal. The Petitioner submits a brief in support of the appeal, re-affirming the bases that it advanced in response to the NOIR. The record consists of the petition with supporting documentation, the NOIR and the Petitioner's response, the Director's decision, and an appeal and brief. We have reviewed the evidence in its entirety in reaching our decision. As discussed below, we concur with the Director's determination that the Petitioner's program does not satisfy the three regulatory requirements of an eligible program: (1) public access; (2) a cultural component; and (3) a work component tied to the cultural component. 8 C.F.R. § 214.2(q)(3)(iii).[1]

In its initial submission, the Petitioner explained that it operates 13 restaurants in the United States, each one expressing "a unique international culinary tradition ranging from Spain, to Greece and the Mediterranean, to Mexico and China," including the Spanish cuisine restaurants, in and in Maryland, and Virginia. The Petitioner emphasized that the submitted evidence "clearly demonstrates that [the Petitioner] has an established cultural exchange program that is carried out by its ethno-centric restaurants, and that [its] restaurants share the attitude, customs, history, heritage, philosophy, and traditions of specific cultures with special emphasis on Spain." The Petitioner characterized the menu as offering the traditional small dishes of Spain (tapas) where "classic Spanish ingredients and dishes are re-imagined" and guests are educated "on regional cuisine and Spanish techniques" by dining at a counter where the chefs create their dishes, "so that there is constant interaction between the two." The Petitioner described as an "acclaimed Spanish culinary destination" with which it "revolutionized the restaurant industry in the United States with the introduction of a tapas-based menu."

The initial submission also contained materials about including numerous press releases and articles indicating that offers a cooking class dinner once every month, and develops special menus in honor of Spanish holidays and seasonal traditional Spanish cuisine in annual events open to the public such as the and The exhibits showed that the restaurant holds demonstrations at local farmers' markets during those festivals, and has partnered with the in some of those events and others, such as an annual and that the Petitioner has organized and catered events held by the and in partnership with other Spanish cultural organizations throughout the national capital region. The Petitioner further submitted a copy of a 2012 approval notice for Form I-129, Q-1 classification

[1] We note that counsel's initial letter averred that the Petitioner is exempted by the regulation at 8 C.F.R. § 214.2(q)(4)(iii) from submitting as initial evidence the information and documentation required by 8 C.F.R. § 214.2(q)(4)(i). The cited regulation only provides an exemption to those Q-1 petitioners who can show that their international cultural exchange program was approved in the same calendar year. The instant petition was filed in 2015. The Petitioner submitted a copy of a prior approval notice for Form I-129, Q-1 classification petition it filed in 2012. Therefore, as noted by the Director in the NOIR, pursuant to 8 C.F.R. § 214.2(q)(4)(iii), the Petitioner was required to submit all initial evidence required by regulation at the time of filing this petition.

petition it filed in 2012 on behalf of four other beneficiaries, its letter in support of that petition, and a letter from the in support of that petition.

On the petition, the Petitioner indicated that the Beneficiary would be working at the restaurant The Petitioner's initial support letter, which was incomplete,[2] provided the following partial job description:

> We also anticipate that [the Beneficiary] will provide training, demonstrations, and consultations to our culinary staff about the art of preparing traditional and *avant-garde* Spanish foods and about the rich cultural heritage in which these foods are rooted. In addition, [the Beneficiary] will conduct master classes, lecture-demonstrations and workshops for people of all ages, in an effort to share the cultural heritage of the foods of his native Spain, as well as the culinary customs and traditions.

The supporting documentation pertaining to the Beneficiary's qualifications included his *curriculum vitae* (CV) and exhibits regarding his educational background and employment in the field.

The Director issued a NOIR, in which she instructed the Petitioner to submit additional evidence to establish that it operates a cultural exchange program that meets the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), in terms of its accessibility to the public, the existence of a cultural component that is an essential and integral part of the participant's employment, and the existence of a work component that is not independent of the cultural component of the program. The Director noted that while the Beneficiary's work location is at "the [B]eneficiary's duties are not explained anywhere in the record."

In its response, the Petitioner explained that it "requires the expert services of chefs . . . who are trained in and possess extensive knowledge of the unique culinary traditions from Spain" to enable it to "more fully engage with the American public and educate and entertain them with the rich culinary and cultural traditions from Spain." The Petitioner requested that, although it "originally listed as the place of employment, the Petitioner would like to amend the place of employment to restaurant as most of the Spanish festivals take place at and also because ' offers an authentic Spanish experience with an impressive assortment of tapas . . . as well as an extensive menu consisting of authentic paella and other traditional and re-invented Spanish dishes." The Petitioner also emphasized that its "commitment to exposing the American public to the rich culinary traditions of Spain is evident not only in the restaurant daily operations, but also in regular and ongoing special events such as tastings, festivals and feasts to commemorate the culture's important holidays."

[2] The second page ends with a partial sentence that is not continued on the following page, indicating that a portion of the letter is missing.

In support of the NOIR response, the Petitioner provided a statement detailing the Beneficiary's proposed job duties and responsibilities as participating in cultural outreach events such as "Spanish festivals, tastings and Spanish Food Shows," held annually at three locations, including the following events:

- – a Christmas-season celebration of the arrival of the magi;
- – a three-week celebration of the food and drink of the region of Andalusia, the region where was born;
- – showcasing acorn-fed ham;
- – offering special paella dishes from the region of
- – a two-week celebration of "all things tomato coinciding with the annual tomato festival and food fight in Spain;
- – special dishes and drinks celebrating the clementine;
- Coaching American chefs in the preparation of Spanish specialties; and
- Paella and Spanish cooking classes – monthly Spanish cooking classes.

The Petitioner indicated that at those events the participant "will present the food products, and describe the cultural heritage of the goods, customs and traditions of Spanish regional specialty cuisines to the American Public." In addition, the Petitioner noted that the Beneficiary will participate in events outside of the restaurants, such as monthly paella cooking demonstrations at the daily lunch service on the in and the in

The Petitioner also submitted a letter from Professor of Anthropology at an expert in the anthropology of food and culture. stated that a huge body of scholarship has explored the way that food is culture. She noted that "[r]estaurants and chefs can play a key role in the transmission of culture as they deliver traditional dishes to reflect heritage and history," and that "[f]ood is an effective way to transmit culture because it permits a simultaneously intellectual and sensory encounter with cultural difference." She expressed her opinion that "the cultural and work components of [the Petitioner's] program dovetail well with the Q-1 visa requirements" because when the program participant shares Spanish food with the American public he or she is sharing Spanish culture. The Petitioner's NOIR response also included an article published at titled, ' which explained what food means in different cultures.

The Director revoked the approval of the petition, concluding that the Petitioner's program does not satisfy the public accessibility or cultural component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). Specifically, the Director determined that the exhibits did not establish that the Petitioner's program has a cultural component that is an essential and integral part of the participant's employment. Instead, the Director found that "[t]he [B]eneficiary's work will be primarily independent of the cultural component of an international cultural exchange program," conducting the cooking duties inherent at any restaurant employment. The Director acknowledged

that any restaurant featuring a specific foreign cuisine involves some measure of cultural exchange, but concluded that the Petitioner is primarily engaged in the business of food service, with any Spanish cultural exchange being peripheral to its primary purpose. The Director also found that the Petitioner's change in the Beneficiary's work location constituted a material change in an effort to make the deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See e.g., Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

On appeal, the Petitioner maintains that the Director did not properly review and analyze all of the evidence submitted at the time of filing and in response to the NOIR, and claims that such evidence was sufficient to establish that it operates an international cultural exchange program that is accessible to the public and includes the required cultural component. The Petitioner requests that DHS consider all the evidence of a structured international cultural exchange program at the restaurant, including regional meals, cooking classes and festival participation.

The Petitioner's appellate brief further avers that the Director's decision to revoke the approval of the petition was "an erroneous application of the stricter 'clear and convincing' standard of evidence." The record does not support the Petitioner's statement that the Director held the Petitioner's evidence to an elevated standard beyond that which is required by most administrative immigration cases, the preponderance of the evidence standard of proof. This standard is outlined in *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), which indicated that in evaluating evidence, DHS 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." DHS determines the truth not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. at 376. Using this standard, and for the reasons discussed below, we concur with the Director's conclusion that the Petitioner's proposed 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).

As a preliminary matter, we agree with the Director that amending the place of the Beneficiary's employment from [redacted] to [redacted] upon receipt of the NOIR constituted an impermissible material change to the proposed cultural exchange program. The Petitioner explained that "most of the Spanish festivals take place at [redacted] which "offers an authentic Spanish experience," and meets the public accessibility, cultural and work component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii), "not only in the restaurant [redacted] daily operations, but also in regular and ongoing special events such as tastings, festivals and feasts to commemorate the culture's important holidays." A Petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 176.

If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Based on the Petitioner's initial evidence, the Petitioner did not show that the Beneficiary's employment at [redacted] satisfied the component requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii). The submitted materials indicate that [redacted] provides a tasting menu of over 25 savory dishes at a 12-seat counter described in the Petitioner's support letter as designed to provide "constant interaction" between

guests and chefs. Although the Petitioner's letter stated that [redacted] is a restaurant concept where "classic Spanish ingredients and dishes are re-imagined," the exhibits did not sufficiently demonstrate how the restaurant provides "an authentic Spanish experience," or that [redacted] has any clearly scheduled Spanish cultural events. Based on its initial submission, the Petitioner did not establish that at [redacted] the Beneficiary would be engaged in employment of which the *essential element* is the sharing of Spanish culture with the American public.

Regardless, assuming *arguendo* that the Petitioner's cultural exchange program at [redacted] had been in place and properly documented at the time of filing, for the reasons discussed below, we concur with the Director's finding that the Petitioner has not shown that its program at [redacted] satisfies the three regulatory requirements of an eligible program: (1) public access; (2) a cultural component; and (3) a work component tied to the cultural component. 8 C.F.R. § 214.2(q)(3)(iii).

In addition, although not discussed by the Director, as a threshold issue the Petitioner has not provided the required itinerary. As previously noted, the record indicates that the Petitioner operates three [redacted] restaurants, in [redacted] Maryland, and [redacted] Virginia. The Petitioner has not identified the location or locations at which the Beneficiary will be placed. The regulation at 8 C.F.R § 214.2(q)(5)(iii) requires an itinerary with the dates and locations of services where the Beneficiary will engage in the program at more than one location. Even assuming that this specific provision applies only to situations where the Beneficiary will move locations rather than serve in one of multiple locations, it reveals that the location is relevant. The Petitioner has not provided this information.

B. Accessibility to the Public

Pursuant to the regulation at 8 C.F.R. § 214.2(q)(3)(iii)(A), 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.

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 business. As examples of insufficient public access, the regulation cites "[a]ctivities that take place in a private home or an isolated business setting." 8 C.F.R. § 214.2(q)(3)(iii)(A). The Petitioner's [redacted] restaurant was designed to offer an authentic Spanish culinary experience and is marketed to the public as such. Therefore, we find that it surpasses these negative examples, and is not an "isolated business setting."

In order to meet 8 C.F.R. § 214.2(q)(3)(iii)(A), however, the Petitioner must also establish that the American public, or a segment of the American public sharing a common cultural interest, is exposed to aspects of a foreign culture *as part of a structured program.* The Petitioner's exhibits indicate that it offers a monthly Spanish cooking class, and the annual [redacted]

and festivals, which could be considered planned, structured activities offered to the public. Based on the submitted evidence we must conclude, however, that most of the interactions between the program participant and the restaurant's guests are casual and unstructured. While the participant may, at the above-mentioned structured activities engage guests, answer questions, and share some aspects of Spanish language or culture in order to ensure the authenticity of the dining experience, the evidence does not sufficiently establish that the Beneficiary would be sharing his culture with the American public as part of a structured program.

We acknowledge that the Petitioner's restaurant also has played a part as caterer for cultural events sponsored by the however, events organized or sponsored by other organizations or entities cannot qualify as an international cultural exchange program of the Petitioner. To be considered a "qualified employer" for the purposes of filing a Q-1 petition, the petitioner itself must administer an established international qualifying exchange program. *See* 8 C.F.R. §§ 214.2(q)(1)(iii) and 214.2(q)(4)(1)(A).

Overall, based on the submitted evidence, we cannot find that the Petitioner's program fully complies with the public accessibility requirement set forth at 8 C.F.R. § 214.2(q)(3)(A), due to the lack of a structured program.

C. Work and Cultural Components

The international cultural exchange program must have a cultural component designed to exhibit or explain the culture of the Beneficiaries' country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). The cultural component must be an "essential and integral part" of the employment or training. *Id.* The regulation casts a broad net -- attitude, customs, history, heritage, philosophy, or traditions -- to capture the inherent breadth of "culture." *Id.* Lastly, the beneficiary's employment or training in the United States must be tied to the program's cultural component and may not be independent of that component. 8 C.F.R. § 214.2(q)(3)(iii)(C). We concur with the Director's determination that 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).

The Petitioner's program is structured in such a way that the only *bona fide* structured cultural activities, i.e., monthly Spanish cooking classes and the annual and festivals, would account for a very small portion of the participant's time and occur outside of the participant's primary responsibilities as a chef. As acknowledged by the Petitioner in response to the NOIR, the Beneficiary's responsibilities regarding these structured cultural activities would be "[i]n addition to the typical core duties of any Chef." It is reasonable to conclude that as a chef the Beneficiary would spend the majority of his time in the kitchen performing the duties typical of the profession. Although the cooking classes and festival presentations occur with some regularity they would not comprise a significant portion of the Beneficiary's time. The vast majority of the interactions between the Beneficiary and the public would be limited to informal exchanges in the course of preparing and presenting dishes. In addition, the Petitioner indicated the Beneficiary will be spending an unspecified amount of time training the restaurant's American staff and planning new dishes to be

included in the restaurant's tapas menu, all duties which would further limit the time he is engaged in direct contact with the public. Further, although the Petitioner indicates that the Beneficiary will travel to local farmers' markets and other off-premises locales in order to share his Spanish cultural heritage, the Petitioner itself does not administer a cultural program outside of its own restaurants, but rather occasionally caters for cultural organizations or provides an off-premises cooking demonstrations for the public during its annual festivals.

With respect to letter, DHS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). DHS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; DHS may evaluate the content of those letters as to whether they support that beneficiary's eligibility. *See id.* at 795. DHS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). discussed the nexus between food and the culture that produces it, and explained that sharing food is sharing culture. While the Director acknowledged, and we agree, that any restaurant featuring a specific foreign cuisine involves some measure of cultural exchange, the international cultural exchange program's cultural component must be an essential and integral part of the participant's employment or training. 8 C.F.R. § 214.2(q)(3)(iii)(B). Upon review of the totality of the evidence, we must conclude that the primary purpose of the Petitioner's hiring of the Beneficiary is to prepare food and add to the authenticity of its Spanish dining experience, rather than to provide a structured cultural exchange program. The presence of the foreign employee may contribute to customers' overall experience at the restaurant; however, the fact remains that the participant will be spending the vast majority of his time on a daily basis performing the standard duties of his position as a kitchen worker, during which period his cultural interaction with customers will be limited to informal and unstructured cultural exchanges.

We also recognize that the local communities in and regard the restaurants as an important Spanish cultural resource in making available authentic and affordable Spanish cuisine. However, this does not elevate the Petitioner's Spanish restaurant to an international cultural exchange program. Based upon the evidence submitted, the Petitioner's ethno-centric restaurant is engaged in the business of selling its products, not primarily in promoting cultural exchange. The Petitioner is an active participant in the local Spanish food community and events sponsored within that community. The Petitioner has also demonstrated that the Beneficiary is a qualified chef from Spain. It cannot be concluded, however, 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 Spain.

Finally, we acknowledge that DHS has approved a previous Q-1 nonimmigrant petition filed by the Petitioner on behalf of other beneficiaries. In making a determination of statutory eligibility, DHS is

limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). We are not 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'r 1988). Based on the lack of required evidence of eligibility in the current record, we find that the Director was justified in departing from any previous petition approvals by revoking the approval of the instant petition.

III. CONCLUSION

The Petitioner has not established that its cultural exchange program satisfies the public accessibility requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A), due to the lack of structured cultural activities, and 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. Accordingly, the Director properly revoked the approval of the petition.

For the above reasons, the Petitioner has not met its 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).

ORDER: The appeal is dismissed.

Cite as *Matter of T- LLC*, ID# 29592 (AAO Dec. 5, 2016)