



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **FEB 18 2014** Office: CALIFORNIA SERVICE CENTER

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg  
Chief, Administrative Appeals Office

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

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 operates an Indian vegetarian restaurant. It seeks to hire the beneficiary in the position of Chaat<sup>1</sup> Cook for a period of 15 months.<sup>2</sup>

The director denied the petition, concluding that the petitioner failed to establish that its program is eligible for designation by the United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act. Specifically, the director determined that the petitioner failed to establish that it operates an international cultural exchange program that is accessible to the American public and that has a cultural component that is an essential and integral part of the international cultural exchange visitor's employment. The director further found that a cook in a restaurant is ineligible for Q-1 classification unless the restaurant is specifically structured and operated as a cultural exchange program

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director erred in failing to assess all evidence and legal reasoning submitted in support of the petition. On appeal, counsel asserts that the evidence establishes the petitioner is a qualified employer operating a program which satisfies all Q-1 regulatory requirements. Counsel further asserts that the petitioner has established that its program is eligible for designation by USCIS as an international cultural exchange program, based upon the record evidence of its cooking demonstrations and participation in food fairs, at which “[b]eneficiary explains the different tastes, the separation of flavors and the health benefits of chaat and shows how different chaats have evolved into an indicator of social standing and religious and political identity.” The petitioner submits a brief and evidence in support of the appeal.

## I. The Law

Section 101(a)(15)(Q)(i) of the 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

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<sup>1</sup> The record reveals that chaat is a term describing savory snacks based on fried dough with various other ingredients.

<sup>2</sup> The petition indicates the petitioner seeks to hire the beneficiary for a period of 17 months. However, pursuant to 8 C.F.R. § 214.2(q)(1)(iii), an approved petition for an alien classified under section 101(a)(15)(Q)(i) of the Act shall be valid for a period of time not to exceed 15 months.

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 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 sole issue addressed by the director is whether the petitioner established that it maintains an established international cultural exchange program in accordance with the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii).

The petitioner operates an Indian vegetarian restaurant in [REDACTED] California and employs approximately 25 workers. It seeks to hire the beneficiary, an Indian citizen, to fill the position of chaat cook. The petitioner set forth the beneficiary's qualifications and provided the following job description:

[The beneficiary] is eminently qualified to perform the duties of the Chaat Chef. [The beneficiary] has over 14 years of experience in the hospitality industry including various responsibilities such as supervisory role of Sous Chef and Head Chef. He has launched new menus and trained junior staff members and is skilled in the production and presentation of food as necessary to maintain 5 star international standards .

\* \* \*

[The beneficiary] through personal visits and demonstrations will familiarize the American public on the health and taste benefits of Chaat. It is [the petitioner's] belief that as more people are educated about Chaat, it will provide [the petitioner] with added business opportunities and assist in realize [sic] greater profitability. The methodology, venues and media which will be employed by [the petitioner] to exhibit and explain the history, customs, philosophy and attitude of Chaat include:

- Holding Regular Cooking Classes and demonstrations at [the petitioner's] locations
- Holding Regular Cooking and demonstration Classes at retail stores . . .
- Participating in at least 2-3 local food fairs a week through the summer and fall seasons
- Appearing on local radio/TV shows to explain recipes and the health benefits of Chaat
- Demonstrate cooking techniques to local culinary school students . . .

The petitioner's supporting documentation included information from the company's public website, which indicates that the restaurant is [REDACTED] (accessed on April 26, 2013.) According to the C.V of the petitioner's owner, [REDACTED] the petitioning restaurant opened for business in Fremont on

December 12, 2012. The petitioner provided copies of its menu indicating that the restaurant serves Indian vegetarian cuisine.

On May 7, 2013, the director issued a request for additional evidence (RFE), 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 participants' employment, and the existence of a work component that is not independent of the cultural component of the program.

In a letter dated July 29, 2013, counsel asserted that the evidence submitted at the time of filing demonstrated the existence of both the cultural component of the business and a related work component, and that the public has access to the cultural exchange aspect of the business. Counsel indicated that the petitioner will be using local print and television media to showcase chaat cuisine and “will participate in food fairs, (sic) partner with local culinary schools and businesses to further familiarize American consumers about Chaat cuisine.” Counsel also indicated that the beneficiary “will be conducting cooking demonstrations in the restaurant” which will be “open to the public at large and will be held on a weekly basis.” Counsel provided a list of specific Indian dishes that the beneficiary will prepare at the first 11 weekly cooking demonstrations under the approved petition. Counsel asserted that through these duties the beneficiary will be attempting to familiarize American consumers with “the philosophy, history and health benefits of chaat cuisine” and “the benefits of achieving a balance of the body energies through the consumption of chaat items.” Counsel asserts that interacting with the members of the public at the restaurant’s cooking demonstrations and at local food fairs is essential and integral to the beneficiary’s work responsibilities.

Counsel indicates that the beneficiary will also perform the work duties of a chef at the restaurant, will develop new menu items, and will also be responsible for the following:

- Food preparation
- Attending to all kitchen duties including stock checking and supplies
- Ensuring good kitchen hygiene and housekeeping are followed
- Responsible for proper storage of food items
- Maintaining standards of hygiene and cleanliness in kitchens and related areas
- Training staff

The director denied the petition on September 26, 2013, 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 stated:

Although it is stated that the proposed cooking demonstrations will be conducted by the beneficiary, he will primarily be tasked with preparing and cooking Indian cuisines. The beneficiary must engage in employment in which the essential element is the sharing of the culture of India with the American public . . . Principally the petitioner’s program is focused not on the rendition of “culture sharing,” but on the provision of food preparation and

cooking. The petitioner's objective is not purposefully programmed to improve the American public's knowledge about the history, culture and tradition of India.

The director acknowledged that any restaurant featuring a specific foreign cuisine has a modest degree of cultural exchange, but determined that the petitioner is primarily engaged in the business of food service, with any Indian cultural exchange being peripheral to its primary purpose. Finally the director concluded that the beneficiary as a restaurant employee is ineligible for Q-1 classification unless the restaurant is specifically structured and operated as a cultural exchange program.

On appeal, counsel for the petitioner asserts that the director failed to properly review and analyze all of the evidence submitted at the time of filing and in response to the request for evidence, 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.

In support of the appeal, the petitioner submitted an Indian vegetarian recipe published at [REDACTED] (accessed on November 21, 2013), indicating the average annual wage earned by chefs and head cooks in the Fremont area. The petitioner also submitted several photographs showing the beneficiary at the restaurant prepared for a cooking demonstration, and a photograph showing the beneficiary at the petitioner's booth at a local food fair. The remaining documents in support of the appeal have previously been submitted into the record.

## II. Analysis

After careful review of the record, the AAO concurs with the director's conclusion that the petitioner failed to establish that its program qualifies for designation as an international cultural exchange program pursuant to the provisions of 8 C.F.R. § 214.2(q)(3). Specifically, the petitioner failed to establish that the beneficiary would be engaged in employment 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 through a structured program.

It is stated 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.*

(Emphasis added.)

Here, the AAO concurs with the director's conclusion that the petitioner does not operate a qualifying international cultural exchange program pursuant to section 101(a)(15)(Q) of the Act. Accordingly, the appeal will be dismissed.

**(A) 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 restaurant was designed to offer an Indian 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 this requirement, 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*. On appeal, the petitioner states that it “regularly dedicates a portion of its restaurant space to conduct cooking demonstrations.” In response to the director’s RFE, counsel indicated the beneficiary will be conducting cooking demonstrations in the restaurant that will be “open to the public at large and will be held on a weekly basis.” The cooking demonstrations could be considered a planned, structured activity offered to the public. However, the record suggests that the scope of any cultural activities undertaken by the beneficiary would only occasionally reach beyond the interactions between the restaurant’s patrons and the beneficiary’s role as cook, a role that traditionally has little or no interaction with customers.

Therefore, it must be concluded that most of the interactions between the petitioner and its customers are casual and unstructured. While we do not doubt that during the weekly cooking demonstrations the beneficiary will engage guests, answer questions, and share some aspects of Indian language or culture, the evidence does not establish that the beneficiary would be sharing his culture with the American public as part of a structured program.

The evidence also establishes that the petitioner's restaurant has participated in food fairs sponsored by the local chamber of commerce; however, events organized or sponsored by other organizations or entities cannot qualify as an international cultural exchange program of the petitioner.

Overall, the evidence fails to establish 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 structured cultural activities.

### **(B) Work and Cultural Components**

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. 8 C.F.R. § 214.2(q)(3)(ii)(B). The work component must serve as the vehicle to achieve the objectives of the cultural component. 8 C.F.R. § 214.2(q)(3)(ii)(C). The AAO concurs with the director's determination that the duties to be performed by the beneficiary are independent of the petitioner's proposed structured cultural program components.

The petitioner's program is structured in such a way that the only *bona fide* structured cultural activities, i.e., weekly cooking demonstrations, would account for a very small portion of the participant's time. The vast majority of the interaction between the beneficiary as Chaat Cook and the public would be limited on a day-to-day basis. Furthermore, the petitioner indicates that the beneficiary will be spending an unspecified amount of time training other staff of the restaurant, which would further limit the time he is engaged in direct contact with the public. Although the petitioner indicates that the beneficiary will travel to local schools and businesses and other off-premises locales such as food fairs in order to share his Indian cultural heritage, the petitioner itself does not administer a cultural program outside of its own restaurant. Moreover, although the petitioner indicates the beneficiary will be responsible for explaining the cultural customs and traditions of India, it is reasonable to believe that a cook is required to spend the majority of his time in the kitchen performing the duties typical of the job. The cooking demonstrations occur with some regularity, but, again, are not part of a structured program and would not comprise a significant portion of the beneficiary's time.

Upon review, the totality of the evidence establishes that the primary purpose of the petitioner's hiring of the beneficiary is to prepare food and add to the authenticity of its Indian dining experience, rather than to provide a structured cultural exchange program. 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. 8 C.F.R. § 214.2(q)(3)(iii)(B). The presence of the foreign employee may contribute to customers' overall experience at the restaurant; however, the fact remains that the beneficiary will be spending the vast majority of his time on a daily basis performing the standard duties of his positions as Chaat Cook, during which period his cultural interaction with customers will be limited to informal and unstructured cultural exchanges.

The evidence establishes the petitioner is simply an ethnic restaurant engaged in the business of selling its products, not primarily in promoting cultural exchange. The petitioner may be an active participant in the local Indophile community and events sponsored within that community. The petitioner has also demonstrated that the beneficiary is a qualified Chat Cook from India. 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 India.

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 not been met.

**ORDER:** The appeal is dismissed.