



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

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

In Re: 26061603

Date: MAY 18, 2023

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (International Exchange or Cultural Worker – Q)

The Petitioner seeks to classify the Beneficiaries as international cultural exchange visitors. *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 Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner's program is 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. 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.

II. ANALYSIS

A. Eligibility Claims

The sole issue the Director addressed 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 Petitioner is an Italian restaurant in [REDACTED] South Carolina and employs 21 workers. It seeks to hire the five Beneficiaries, all Italian citizens, as Italian Cultural Ambassadors (ICAs) in its Italian Cultural Exchange Program (ICEP). It indicates they will "rotate in the positions of Server and Pizza Chef" for a period of 15 months. Within the initial submission, the Petitioner provided a job description as follows:

The [ICAs] working in our restaurant will be greeting guests, taking orders, and serving food and beverages while sharing Italian culture and traditions. They will perform 'front of the house' duties such as greeting and seating guests, operating traditional and computerized cash registers, restocking inventory, serving food and maintaining the appearance of our restaurant. They will be interacting with guests, taking orders, preparing meals, and explaining their cultural knowledge and reasons for our authentic Italian ingredients and preparation methods with those guests.

Having the representatives relate culturally with the dish and explain the history of the dish with a personal connection is "key," from a guest's point of view. The [ICAs'] personal stories will give the guests insight into other cultures that they may otherwise never be able to experience.

The Petitioner indicated that in recruiting ICAs it sought "beneficiaries with the requisite restaurant experience and ability to share their culture," and that each Beneficiary would receive "a rate of pay

which is the same as that of our resident employees in the same position.” The petitioning restaurant described itself as being “an Italian Cultural immersion experience founded by Italian family members whose plan from the founding has been to bring authentic Italian culture to [REDACTED] S.C.” It asserts that its “authentic Italian cultural experience will be greatly enhanced by having [ICAs].”

The Petitioner’s supporting documentation provided information from its public website, including pictures of its interior, the story of its founding in 2008, its menu, and its ICEP brochure. The ICEP brochure informs prospective participants that they will work “waiting tables, cooking food, taking care of guests, sharing your cultural experiences, and showing them Italian warmth and hospitality.” It also indicates that through Professional Development workshops, participants will learn and develop their skills in areas such as “Restaurant Basics, Order Taking, Food Safety, and Wine Tasting.”

The initial submission also included the Petitioner’s Professional Development Classes list, ICEP Activity & Training Calendar, 2022-2023 Calendar of Italian Cultural Events, and Employee Handbook. The 12-month ICEP Activity & Training Calendar (ATC) list a weekly schedule of events for the first month, and a biweekly schedule for the remaining months, with all events taking place on Sunday afternoons. The ATC indicates that all program beneficiaries will be participating in the listed events and activities upon their arrival.

The ATC categorizes event types as either restaurant training, professional development, excursion/travel, or social/networking. Program participants will receive a total of four restaurant trainings, three of them in the first month, covering an introduction to the petitioning restaurant; a tour of [REDACTED] food handling safety; restaurant basics; order taking; busing a table; food preparation basics; and wine and beer service. Program participants will also attend nine monthly professional development workshops regarding customer service; first aid; payroll and banking; pizza and pasta making; and ice cream, coffee, and espresso preparation.

The 2022-2023 Calendar of Italian Cultural Events lists monthly events to be held at the petitioning restaurant “led by a member of [the petitioning organization’s] ownership, local expert or personality, or University professor, along with participation by the [ICAs] to lend a true and authentic Italian perspective.” Events include *Making Homemade Pasta*; *Rome and the Vatican*; *Sports in Italy*; *Architecture in Italy*; *Italian Art*; *Holidays in Italy*; *Famous Italians*; *Wine Tasting*; *Italian History*; *Christmas in Italy*; *Italian Cooking – An Overview*; and *Basics of Pizza Making*.

The Petitioner’s Employee Handbook indicates its general provisions apply to “both American Employees and Q-1 VISA Participants [ICAs],” and provides that ICAs are additionally expected to perform the following tasks:

- chat about their homeland and culture with customers
- wear name tags with the Italian flag and the name of their hometown or city
- greet customers first in Italian, then in English
- tell guests their home city and why it is special or interesting
- tell guests how menu items are the same or different in Italy
- use proper Italian terms when taking orders
- name food orders first in Italian, then in English
- highlight their Italian heritage and how things are done in Italy

The Petitioner's initial submission further provided the Beneficiaries' resumes indicating their prior experience in the hospitality industry. Moreover, the Petitioner submitted its offers of employment to the Beneficiaries, indicating that as an ICA they "may work in various customer-facing roles" and that "[n]on-tipped employees, Pizzaiolo (pizza maker) and Pastaio (pasta maker), will earn an hourly rate of minimum wage during training; after training is completed, non-tipped hourly employees will earn no less than \$10.00 per hour. Tipped employees – servers (waitstaff) will earn a minimum hourly rate equal to \$6.00 per hour."

The Director issued a request for additional evidence (RFE) to establish that the Petitioner operates a cultural exchange program that meets the requirements set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A), (B), and (C), in terms of public accessibility, 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.

Within its RFE response the Petitioner asserted that "the cultural role of the Italian Cultural Ambassadors is an integral part of the work component in the roles of Host/Hostess, Server and Cook." It explained that the Beneficiaries "will be working in typical restaurant positions at our Italian location and through this work, which is all public facing and interacting, they will be sharing the native Italian cultural component including explaining the attitude, customs, history, heritage, philosophy, and traditions of Italy."

The Director denied the petition, concluding that the Petitioner's program does not satisfy the cultural component requirement set forth at 8 C.F.R. § 214.2(q)(3)(iii)(B). Specifically, the Director found that any cultural component of the Petitioner's program was not designed on the whole to exhibit or explain Italian culture. Rather, the Beneficiaries will primarily be involved in duties "typical of wait staff in any restaurant."

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 RFE, and avers that such evidence was sufficient to establish that it operates an international cultural exchange program that includes the required cultural component.

For the reasons discussed below, we agree with the Director's conclusion that the Petitioner has not established 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 has not demonstrated that the Beneficiaries 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 Beneficiaries' country of nationality through a structured program. Rather, the amount of cultural sharing among the program participants and the public would be tangential to their employment. In addition, the bona fide cultural activities would account for a very small portion of the Beneficiaries' time and be independent of the work component of the program.

B. Cultural Exchange Program Requirements

1. Accessibility to the Public

The Director's decision did not address whether the Petitioner's program is accessible to the American public in satisfaction of 8 C.F.R. § 214.2(q)(3)(iii)(A). 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 petitioning restaurant was designed to offer an authentic Italian 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*. The submitted evidence indicates that it plans to offer monthly Italian Cultural Events which could be considered planned, structured activities offered to the public. While the program participants may, at such structured activities, engage guests, answer questions, and share some aspects of Italian language or culture, the evidence does not sufficiently establish that the Beneficiaries would be sharing their culture with the American public as part of a structured program.

As discussed further below, the record suggests that the scope of any cultural activities undertaken by program participants would only occasionally reach beyond their assigned roles as hosts, servers, and cooks, and that most of the interactions between the program participants and the restaurant's guests are casual and unstructured. While the participants may, in their interactions with the Petitioner's patrons, engage guests, answer questions, and share some aspects of Italian language or culture in order to ensure the authenticity of the dining experience, the evidence does not sufficiently establish that the Beneficiaries would be sharing their culture with the American public as part of a structured program. Overall, the evidence does not 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 a structured program.

2. Cultural Component

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.* We agree 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).

Although the Petitioner proposes to invite guests and speakers for monthly presentations, it has not submitted evidence as to who, in addition to the Beneficiaries, will conduct any of these more structured means of cultural exchange, or that the Beneficiaries possess the qualifications to participate in delivering these more in-depth cultural presentations. In addition, as discussed previously, it appears these events will be conducted independently from the participants' assigned restaurant service positions, and occur with much less frequency. We cannot conclude that any ICAs would participate in these structured cultural activities more than one time per month during a 15-month stay in the United States, much less as the essential component of their day-to-day employment.

The record shows that while on duty, the Beneficiaries will be expected to fully perform the same duties as others working in those positions at the Petitioner's business location (for example, a host greeting guests, a server taking orders and serving the food, and a cook preparing the food), which would reasonably limit the amount of time they could spend interacting with individual guests. Daily interactions with restaurant guests, such as wearing a country-specific nametag and engaging guests in conversations about their home countries, are merely casual and unstructured cultural exchanges. The Petitioner has not established that such daily cultural interactions of the participants would be part of a structured program truly designed to share the history, culture, and traditions of the country of the Beneficiaries' nationality. Further, while the host and server positions traditionally involve direct service to guests, the time spent by the Beneficiaries in their assigned positions as cooks, specifically pizza and pasta makers, appear to involve little if any interaction with the public.

Overall, the evidence in the record does not establish that the Beneficiaries will share their culture with the public on a regular basis as an essential element of their work-related responsibilities. The totality of the evidence establishes that the primary purpose of the Petitioner's hiring of the Beneficiaries is to prepare and serve food and add to the authenticity of its Italian dining experience, rather than to provide a structured cultural exchange program. The regulation specifies that the program's cultural component must be designed *on the whole* to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the exchange visitors' country of nationality. 8 C.F.R. § 214.2(q)(3)(iii)(B). The presence of the foreign employees may contribute to customers' overall experience at the restaurant; however, the fact remains that the Beneficiaries will be spending the vast majority of their time on a daily basis performing the standard duties of their positions as hosts, servers, and cooks, during which period their cultural interaction with customers will be limited to informal and unstructured cultural exchanges.

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).

3. Work Component

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's decision did not address whether the Petitioner's proposed cultural exchange program satisfies the work component set forth at 8 C.F.R. § 214.2(q)(3)(iii)(C). Overall, the Petitioner has not shown that the majority of the Beneficiaries' work serves as a "vehicle" to achieve the program's cultural objectives and that such objectives will "result from" their work.

As mentioned above, the record reflects that Petitioner's program is organized in such a way that its structured cultural activities, i.e., Italian Cultural Events occurring no more than one time per month during a 15-month stay in the United States, would account for a small portion of the participants' time and occur outside of the participants' primary responsibilities as restaurant hosts, servers, and cooks. The vast majority of the interaction between the Beneficiaries and the public would be limited on a day-to-day basis to informal exchanges in the course of greeting customers, taking orders, and serving food. The submitted evidence does not establish that the Beneficiaries' will devote the majority of their time as the vehicle to transmit Italian language, culture, customs, heritage, traditions, etc. to the public. 8 C.F.R. § 214.2(q)(3)(iii)(C).

Lastly, we acknowledge that the Petitioner submitted an advisory opinion letter from [redacted] senior director of talent acquisition with [redacted] in New York, who provides that he has worked closely with several internationally themed food service operations that utilize Q-1 visas in and around Disney World in Florida. He asserts that the Petitioner's program is similar to those of the other approved Q-1 cases involving workers in "restaurants and culinary spaces" at Disney World. However, unlike the Walt Disney World Resort, the Petitioner operates one Italian restaurant. As discussed, 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 Epcot Center referred to by [redacted] are highly structured cultural exhibitions that may operate a restaurant as an integral part of that exhibition. This is clearly distinguishable from an ethnic restaurant that proposes to hold monthly Italian Cultural Events.

As the Director's decision noted, we may, in our discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Moreover, each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). We do not have before us a Q-1 petition filed by Disney and cannot compare that organization's existing Q-1 program to the Petitioner's proposed Q-1 program.

Based on the foregoing discussion, the Petitioner has not established that its cultural exchange program satisfies the public accessibility, cultural, and work components set forth at 8 C.F.R. § 214.2(q)(3)(iii)(A)-(C). Accordingly, the appeal will be dismissed on this basis.

III. CONCLUSION

The Petitioner has not established that its cultural exchange program satisfies the public accessibility, cultural, and work components set forth at 8 C.F.R. §§ 214.2(q)(3)(iii)(A)-(C). Consequently, the Beneficiaries are 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.

ORDER: The appeal is dismissed.