U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27546872

Date: AUG. 16, 2023

Appeal of California 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 California Service Center denied the petition, concluding that the Petitioner has not established that the Beneficiaries are qualified to perform the proposed duties of international cultural exchange visitors, because it has not shown they meet the communication requirements set forth at 8 C.F.R. § 214.2(q)(3)(iv)(C).

The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that the Director overlooked previously submitted evidence.[1] 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, and 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

[1] The Petitioner also challenges the Director's denial of its concurrent request to change the Beneficiaries' status because they had been working without authorization while in the United States on B-2 visitor visas. However, there is no appeal for denied change of status applications. *See* 8 C.F.R. § 248.3(g). We therefore lack jurisdiction to review a denial of an application for change of status.

> 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.

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)(iv), participants in Q-1 cultural exchange programs must:

> (A) Be at least 18 years of age at the time the petition is filed;
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> (B) Be qualified to perform the service or labor or receive the type of training stated in the petition;
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> (C) Have the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and
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> (D) Have 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.

II. ANALYSIS

The Director determined that the Beneficiaries are not eligible for Q-1 status because the record did not demonstrate that they have the ability to communicate effectively about the cultural attributes of their country of nationality to the American public, as required by 8 C.F.R. § 214.2(q)(3)(iv)(C). Specifically, the Director found that the Petitioner did not establish that the Beneficiaries possess "the required level of competency . . . in English" to "effectively communicate the cultural attributes of their countries."

The Petitioner is a Brazilian food buffet restaurant in [redacted] Florida and employs 36 workers. It filed the instant petition in July 2022, seeking to employ the three Beneficiaries, who are all Brazilian nationals, as participants in its Brazilian Food Experience Exchange Program for a period of 15 months. The Petitioner submitted a copy of a prior approval notice for Q-1 classification it filed in April 2022, with a validity period from May 26, 2022, to August 15, 2023. It explained that "in light of the growth and development of the program, [it] has decided to petition for more participants."[2] It indicates the Beneficiaries will work as Churrasqueiros, or barbeque cooks. Within the initial submission, the Petitioner provided resumes and employment verification letters for each of the Beneficiaries, indicating their prior employment as barbecue cooks. It also submitted its signed employment contracts with the Beneficiaries, each of which states:

> [The Petitioner] shall employ [the Beneficiary] as a cook responsible for preparing the most traditional Brazilian dishes daily, dressing according to the various habitual

[2] Pursuant to 8 C.F.R. 214.2(q)(5)(i), a new petition on the form prescribed by U.S. Citizenship and Immigration Services, with the applicable fee, must be filed with the appropriate service center each time a qualified employer wants to bring in additional international cultural exchange visitors.

> patterns of the regions that will be represented, delivering the food to the client in a professional and warm manner typical of the Brazilian way, engaging in conversations about how the food was prepared, providing historical context and information about the cultural elements of the dish, communicating using some words in Portuguese, so clients learn how to pronounce them and relate to the experience they are having, giving them an explanation of the meaning and context of those words, sharing some perspective about the Brazilian culture, history, and cuisine when appropriate.

The Director issued a request for additional evidence (RFE) to establish that the Beneficiaries have the ability to communicate effectively about the cultural attributes of their country of nationality to the American public. Within its response to the Director's RFE, the Petitioner asserted that,"[a]ll of our employees know how to speak English," but "even if they could not, there is also a nonverbal communication aspect of this cultural program it is important to be highlighted, as it is able to pass on attributes of Brazilian culture to anyone. . . . [O]ur employees will all be wearing typical regional clothing of different Brazilian states for our customers to see the immense cultural diversity that exists in Brazil." The Petitioner argued that "[n]onverbal communication should be taken in regard in the present Exchange Cultural Program . . . that will lead to Americans familiarizing with Brazilian culture."

Although we acknowledge that the Beneficiaries will wear native clothing in their interactions with the Petitioner's patrons, thus adding to the authenticity of its Brazilian dining experience, the Petitioner's contracts with them also require them to speak with customers in English, "engaging in conversations about how the food was prepared, providing historical context and information . . . sharing some perspective about the Brazilian culture, history, and cuisine when appropriate." Counsel for the Petitioner further asserts that all the Beneficiaries "are able to communicate in English, and they have reached out to former language schools and English teachers in order to obtain certificates . . ." For the reasons discussed below, the record does not sufficiently establish that the Beneficiaries have the ability to communicate effectively about their culture to the American public, as required by 8 C.F.R. § 214.2(p)(3)(iv).

Regarding Beneficiary [redacted] the Petitioner provided a certificate signed by C-W-M- confirming that he successfully completed "the First Proficiency Course in English at [redacted] this 21[st] day of December 2005." The document does not indicate how many hours of course instruction he obtained or the English skills he acquired. Nor does the record establish his level of English proficiency at the time the petition was filed in July 2022.

Pertaining to Beneficiary [redacted] the Petitioner submitted a letter from an English teacher in [redacted] Brazil, who states he "has taken English lessons with me throughout the period of July of 2021 to December of 2021 . . . in the fundamental aspects of the English language, including reading, writing, listening, and speaking" and he "has gained a satisfactory level of grammar and vocabulary to allow him to establish conversations with others." As the Director noted however, the author does

not clearly indicate whether Beneficiary [redacted] is proficient at communicating in English. Nor does the letter state how many hours of course instruction he obtained during that period.[3]

In addition, the record contains photographs showing Beneficiaries [redacted] speaking at church events, and letters from church representatives praising their communication skills. But, as the Director also noted, those materials do not indicate that either Beneficiary was required to communicate in English on those occasions.

Regarding Beneficiary [redacted] the Petitioner submitted a certificate signed by an instructor with JB English Course in [redacted] Brazil, confirming he completed the basic, intermediate, and advanced English language program, a total of 144 hours, between May 11, 2016, and September 3, 2020. However, according to a letter from the manager of [redacted] Japanese and Peruvian Restaurant in [redacted] Beneficiary [redacted] was working at that establishment between March 2017 and June 2020. Further, although Beneficiary [redacted] resume lists his participation in 2005 in an advanced English course at the [redacted] School in [redacted] it does not mention his claimed completion of the English language programs at [redacted] Course.[4]

It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, as the Director further noted, the record does not contain CVs or other evidence establishing the credentials of any of the above-referenced teachers in the field of English instruction.

Moreover, the record contains two letters from the head chef at [redacted] Restaurants in [redacted] where Beneficiary [redacted] worked from March 2005 until June 2012. The letter dated 2022 states that Beneficiary [redacted] "did work along with many other teammates from other countries and English was the primar[]y language used by all employees," but it does not indicate his level of proficiency in communicating in English at the time the petition was filed in July 2022. Finally, the Petitioner provided a letter from an event coordinator with [redacted] Brazil, who states that Beneficiary [redacted] has worked with the company in producing and marketing many Brazilian cultural events and "engaging with the Brazilian public." The author does not indicate, however, that this work requires him to communicate in the English language.

For the reasons discussed we agree with the Director's determination that the Petitioner has not sufficiently demonstrated that the Beneficiaries have the ability to communicate effectively about the cultural attributes of their country of nationality to the American public, as required by 8 C.F.R. § 214.2(p)(3)(iv)(C) and the proposed duties of the Petitioner's international cultural exchange program. Accordingly, the appeal will be dismissed on this basis.

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[3] We note that the record contains an employment verification letter from Restaurante [redacted] Brazil confirming that Beneficiary [redacted] was employed at that restaurant during the entire period of his claimed English instruction in [redacted] We take administrative notice that between the cities of [redacted] the driving distance is 434 miles and the flight distance is 284 miles. *See* www.travelmath.com. We note that is nothing in the record before us indicating Beneficiary [redacted] English classes were taken online.

[4] We note that there is nothing in the record before us indicating Beneficiary [redacted] English classes were taken online.

III. CONCLUSION

The Petitioner has not established that the Beneficiaries have the ability to communicate effectively about the cultural attributes of their country of nationality to the American public, as required by 8 C.F.R. § 214.2(p)(3)(iv)(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.