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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: **FEB 09 2012** Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiaries:

PETITION: Petition for 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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, Vermont 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 filed the nonimmigrant petition seeking classification of the beneficiaries as international cultural exchange visitors 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 is a non-profit tax-exempt organization engaged in charitable activities. The petitioner requests that the beneficiaries be granted Q-1 classification so that they may perform speaking engagements in the United States for a period of one month.

The director denied the petition on April 12, 2011, concluding that the petitioner failed to establish: (1) that it has an established program eligible for designation by United States Citizenship and Immigration Services (USCIS) as an international cultural exchange program under section 101(a)(15)(Q)(i) of the Act; (2) that it has a designated employee who will administer the program and serve as a liaison to USCIS; (3) that the beneficiaries are qualified to perform the proposed duties; and (4) that it will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director overlooked previously submitted evidence which substantiates the petitioner's operation of a valid international cultural exchange program since 2005. The petitioner submits additional evidence and copies of previously submitted evidence in support of the appeal.

Upon review, the AAO will withdraw the director's decision in part and dismiss the appeal. The petitioner has overcome the director's findings with respect to three of the four stated grounds for denial. However, the AAO concurs with the director that the petitioner has failed to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed.

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 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)(4)(i) states:

> *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 exchange program and who will serve as a 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. The Petitioner's International Cultural Exchange Program

The first issue to be addressed in this proceeding is whether the petitioner established that its proposed program is eligible for designation by USCIS, under section 101(a)(15)(Q)(i) of the Act, as an international cultural exchange program. The director determined that the petitioner's program is accessible to the American public, but does not satisfy the cultural component or work component requirements for program approval as set forth at 8 C.F.R. § 214.2(q)(3)(iii).

The petitioner sponsors the [redacted], which is designed to promote cultural awareness of the [redacted] located in Kenya while assisting the tribe by providing financial support for the drilling of water wells and educational initiatives. The petitioner and [redacted] sponsor visitors from the [redacted] who provide an interactive presentation to local schools, churches and community organizations located primarily in eastern Pennsylvania. The presentation includes a short film, traditional music and folktales, and discussions of [redacted] traditions and ceremonies, as well a question and answer period that allows participants to address [redacted] daily life and culture. The petitioner provided an itinerary indicating that the beneficiaries are scheduled to deliver this presentation daily during their one-month stay in the United States.

The record also contains corroborating documentation regarding the program, including newspaper articles, program materials, and letters from American children who attended the program,

The AAO finds the evidence of record sufficient to establish that the petitioner operates an international cultural exchange program which is designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the Maasai people of Kenya. The program participants are brought to the United States solely for the purpose of serving as speakers and ambassadors of the [redacted], and the cultural component is inherent to their duties.

Therefore, upon review of the record of proceeding in its entirety, the AAO concludes that the petitioner operates an international cultural exchange program satisfying all the required components prescribed at 8 C.F.R. § 214.2(q)(3)(iii). The director's finding to the contrary will be withdrawn.

The director further found that the petitioner had failed to designate a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as a liaison with USCIS, in accordance with the regulation at 8 C.F.R. § 214.2(q)(4)(i)(B).

In a request for evidence issued on March 30, 2011, the director instructed the petitioner to submit a letter which lists the name, position title, and contact information of the designated program administrator and liaison with USCIS. The petitioner's response dated April 2, 2011 included a section titled "Employee Designation" which indicated that the U.S. organization is administered by [redacted]. The petitioner provided her title, address, telephone number and two e-mail addresses. Upon review, the AAO finds that the petitioner did in fact designate [redacted] as the program administrator and liaison with USCIS and the director's determination that the petitioner failed to satisfy the requirement at 8 C.F.R. § 214.2(q)(4)(i)(B) will be withdrawn.

As a third basis for denial of the petition, the director determined that the petitioner did not "submit evidence that the beneficiaries have the ability to speak English or that they have had prior speaking engagements." The regulations at 8 C.F.R. §§ 214.2(q)(3)(iv)(B) and (C) require the petitioner to establish that the beneficiaries are qualified to perform the service or labor stated in the petition and that they have the ability to communicate effectively about the cultural attributes of their country of nationality to the American public.

In response to the director's RFE, the petitioner explained that the beneficiaries are members of the [redacted], an NGO registered in Kenya in 1994. The petitioner stated that the beneficiaries are qualified speakers and attended the United Nations Forum for Indigenous People in 2005. The petitioner further stated that [redacted] "have published articles on Peace and Conflict Resolution and Climate Change, demonstrate ancient art forms of dance and music." The petitioner also submitted a number of newspaper articles which mention the beneficiaries' previous visits to U.S. schools and churches as part of the MCEP program. On appeal, the petitioner supplements the record with copies of educational and professional certificates for each beneficiary.

The AAO finds the evidence of record sufficient to establish that the beneficiaries have the ability to communicate effectively about their culture to the American public and that they are otherwise qualified to provide the proposed speaking engagements that comprise the petitioner's international cultural exchange program. Accordingly, the director's finding to the contrary is withdrawn.

II. The Aliens' Wages and Working Conditions

The remaining issue to be addressed is whether the petitioner established that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed. 8 C.F.R. § 214.2(q)(4)(i)(D). The regulation at 8 C.F.R. § 214.2(q)(ii)(B) states that the petitioner must report the

international cultural exchange visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers.

The petitioner indicated on the Form I-129 that the beneficiaries' services would be needed for 25 hours per week. The petitioner stated that the beneficiaries will not receive wages, but indicated that it will pay for their travel, lodging and meals during the intended period of stay from April 26, 2011 until May 26, 2011.

The petitioner further explained: "[The petitioning organization] is a private nonprofit 501(c)(3) educational organization that receives public support through cash donations, in kind contributions and grant funding. [The petitioner] has no employees as all its programs are carried out by volunteers. [redacted] speakers receive no remuneration."

In the request for evidence issued on March 30, 2011, the director advised the petitioner that, pursuant to 8 C.F.R. § 214.2(q)(4)(i)(D), it must offer the beneficiaries wages and working conditions comparable to similarly employed domestic workers. The director instructed the petitioner to submit evidence demonstrating that the petitioner is in compliance with the requirement, and noted that such evidence could include copies of contractual agreements between the petitioner and the beneficiaries, and evidence from a credible source indicating that the offered wages are appropriate for the local area.

In a letter dated April 2, 2011, the petitioner stated:

> Our application is unique as there are no employed participants. When the [redacted] were interviewed at the U.S. Embassy in Nairobi in February, 2011, they were told for the first time that they need an I-129 visa petition. The only category which seems remotely close to our description is Q-1 although [participants in] MCEP and SIMOO are NOT employed nor receive compensation for speaking engagements. . . .

The petitioner emphasized that it operates an all-volunteer nonprofit organization with no employees, no salaries and no stipends, and therefore does not qualify as an employer. The petitioner further stated that "wages and working conditions do not apply."

The petitioner submitted copies of invitation letters that were provided to each beneficiary in connection with their applications for B-1/B-2 visas at the U.S. Consulate in Nairobi in February 2011. The letter indicated that the beneficiaries were needed in the United States for events sponsored by MCEP in April and May 2011 and that MCEP would provide and support all travel, accommodations, food and allowances during their stay in the United States.

The director denied the petition, in part, based on the petitioner's failure to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed, as required by 8 C.F.R. § 214.2(q)(4)(i)(D).

In support of the appeal, the petitioner indicates that it is providing "international bank wire transfers substantiating compensation for [redacted] supporting and improving [redacted] standard of living." The accompanying wire transfers show payments made by the petitioning organization to SIMOO. Some of the funds are designated as payments for travel expenses.

Upon review, the evidence of record does not support a conclusion that the petitioner will offer the beneficiaries wages and working conditions comparable to those accorded to local domestic workers similarly employed. Accordingly, although the AAO finds that all other requirements for petition approval have been met and the petitioner operates a bona fide international cultural exchange program, the appeal must be dismissed.

The AAO acknowledges that it may be typical for small nonprofit charitable organizations to rely primarily or solely on volunteers to accomplish their objectives. However, the Q-1 regulations specifically require the petitioning employer to "offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed." 8 C.F.R. § 214.2(q)(4)(i)(D). Therefore, it is reasonable to conclude that the regulations require that the petitioner, regardless of whether it operates a commercial or non-commercial program, and regardless of whether it is a for-profit or nonprofit entity, pay the beneficiaries actual wages commensurate with their duties, as opposed to any other type of compensation, such as payment of travel, food and accommodation expenses.

The AAO recognizes the value of the petitioner's cultural exchange program and does not doubt the intentions of the parties involved or their commitment to the objectives of the program. However, the petitioner's decision to structure the program as one in which the program participants are unpaid volunteers is contrary to the regulatory requirements that must be adhered to by qualified employers. The petitioner readily acknowledges that it does not meet all of the requirements of a qualifying employer for the purposes of the Q-1 visa classification, and repeatedly asserts that, in previous years, it has consistently and successfully assisted the Maasai speakers in obtaining B-1/B-2 visas to perform the same activities in the United States as those described in the instant petition.

Based on the foregoing discussion, the AAO concurs with the director's determination that the petitioner has failed to establish that it will offer the beneficiaries wages and working conditions comparable to those accorded local domestic workers similarly employed. 8 C.F.R. § 214.2(q)(4)(i)(D). Accordingly, the appeal will be dismissed.

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. The director's decision will be withdrawn in part and the petition will remain denied.

ORDER: The appeal is dismissed.