



October 24, 2016

PM-602-0138

## Policy Memorandum

SUBJECT: *Matter of R-C-C-S-D-*, Adopted Decision 2016-04 (AAO Oct. 24, 2016)

### Purpose

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of R-C-C-S-D-* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and binds all U.S. Citizenship and Immigration Services (USCIS) employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

*Matter of R-C-C-S-D-* clarifies that a language immersion school may be eligible for designation as an international cultural exchange program, such that it may petition to classify teachers as Q-1 international cultural exchange visitors. See Immigration and Nationality Act (the Act) section 101(a)(15)(Q). The school's program must satisfy the three regulatory requirements: (1) public access; (2) a cultural component; and (3) a work component tied to the cultural component. The school must also demonstrate in the record the duration of the program. An approved Q-1 petition is valid for the length of the program or 15 months, whichever is shorter.

### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.



## ADOPTED DECISION

### MATTER OF R-C-C-S-D-

ADMINISTRATIVE APPEALS OFFICE  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
DEPARTMENT OF HOMELAND SECURITY

October 24, 2016<sup>[1]</sup>

- (1) The Department of Homeland Security (DHS) may designate a language immersion school as an international cultural exchange program, such that the school may petition for teachers to serve as Q-1 exchange visitors, if the school satisfies three regulatory requirements: (1) public access; (2) a cultural component; and (3) a work component tied to the cultural component. See section 101(a)(15)(Q) of the Immigration and Nationality Act (the Act); 8 C.F.R. § 214.2(q)(3).
- (2) The school must demonstrate in the record the duration of the program. An approved Q-1 petition is valid for the length of the program or 15 months, whichever is shorter.

FOR THE PETITIONER: Jennifer Rilen Casey, Esquire, Denver, Colorado

The Petitioner is the second largest public school district in Delaware with more than 15,000 students in 32 schools. It seeks to employ the four Beneficiaries, who are all Spanish nationals, as elementary school teachers at the William C. Lewis Dual Language Magnet School in Wilmington. The Petitioner explained that the purpose of this school's Spanish immersion program is "to provide an opportunity for our American students to learn Spanish language through lessons on Spanish culture, history, literature, cinema, fiesta, dance and geography that adhere to District curriculum standards and State Common core Standards." As indicated in their job description, the teachers' primary duties include developing lessons plans—and then providing instruction in Spanish and through Spanish literature, gastronomy, history, and traditions—in reading, writing, social studies, personal development, science, and math.

To secure their employment, the Petitioner seeks to classify the Beneficiaries as international cultural exchange visitors. See Immigration and Nationality Act (the Act) section 101(a)(15)(Q),

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<sup>1</sup> On October 24, 2016, U.S. Citizenship and Immigration Services designated this Administrative Appeals Office (AAO) decision as an Adopted Decision. The original AAO decision is *Matter of R-C-C-S-D-*, ID# 17721 (AAO July 18, 2016).

8 U.S.C. § 1101(a)(15)(Q). This Q-1 classification makes nonimmigrant visas available to 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, Vermont Service Center, approved the nonimmigrant petition and certified<sup>2</sup> the decision to us to review her determination that the Petitioner's program is eligible for designation as an international cultural exchange program. The Director found, and the record demonstrates, that the Petitioner is a qualified employer and that the Beneficiaries are eligible for Q status. The sole issue for which the Director seeks our review is whether the Petitioner's proposed *program* is eligible for designation as an international cultural exchange. As discussed below, we concur with the Director's determination that the Petitioner's program 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).

## 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

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<sup>2</sup> See 8 C.F.R. § 103.4.

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 regulation at 8 C.F.R. § 214.2(q)(3)(ii) states that “[e]ach petition for an international cultural exchange program will be approved for the duration of the program, which may not exceed 15 months, plus 30 days to allow time for the participants to make travel arrangements.” In addition, 8 C.F.R. § 214.2(q)(7)(iii) provides that an approved Q petition is valid “for the length of the approved program or fifteen (15) months, whichever is shorter.” 8 C.F.R. § 214.2(q)(7)(iii).

## II. ANALYSIS

### A. Accessibility to the Public

The first requirement is that the program must be publicly accessible. An international cultural exchange program must take place in an establishment where the American public, or a segment sharing a common cultural interest, can partake. 8 C.F.R. § 214.2(q)(3)(iii)(A). The regulation provides examples of what types of locations satisfy public access: a school, museum, business, or other establishment where the public (or at least an interested portion) may access the program. But a private home or an isolated business setting, not open to direct public access, is unacceptable.

This “access” provision also requires that the exchange program be “structured.” The regulation at 8 C.F.R. § 214.2(q)(3)(iii)(B) specifically cites to enrollment-based instructional activities, such as courses and seminars, as examples of “structured” activities.

Here, the Director correctly determined that the proposed activities are publicly accessible. The Delaware Immersion Program website indicates that the Petitioner is one of several Delaware school districts offering a Spanish immersion program, and that the programs are open to all students in the state. The Petitioner notes that its website clearly markets the host school as providing a direct opportunity for the American public to acquire Spanish language and to be immersed in Spanish culture and tradition.

The record reflects that the Beneficiaries will not be coming to the United States solely to teach foreign language classes that are part of a school's traditional curriculum to a limited number of students enrolled in the classes. Rather, as stated by the Petitioner, they will “engage in continuous culture sharing that will take place in a structured manner within the Petitioner's Spanish Dual Immersion Magnet Program and its associated Q-1 Program, where a substantial portion of the participating populations inside and outside [the school district] have direct access.” The documentation in the record, which includes statements from the Beneficiaries as current participants in the Petitioner's approved cultural exchange program, establishes that access to the school's cultural offerings is not limited to the enrolled students. The Beneficiary teachers assist

students to prepare cultural demonstrations for special assemblies and events which are open to the students' families and the community. The Beneficiary teachers also have opportunities to provide cultural lessons to students in other schools within the district. Therefore, we agree with the Director's determination that the Petitioner has established public access.

In addition to demonstrating public access, the Petitioner has established that the cultural exposure will take place "as part of a structured program." The record includes copies of the Petitioner's guidelines for its dual language immersion program, as well as its curricular materials detailing the learning objectives and lesson sequence for various courses. The school's mission statement explains that its dual language immersion model divides its instruction in the Delaware Recommended Curriculum between two classrooms, English and Spanish, with students' time divided between the two teachers depending upon their grade level. We find the submitted documentation sufficient to establish that the program is implemented in a structured manner.

#### B. The Cultural Component

Next, the 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.* And the cultural component must be "structured," which may include activities, commonly but not necessarily enrollment-based, such as seminars, courses, lecture series, and language camps. 8 C.F.R. § 214.2(q)(3)(iii)(A)-(B).

In this case, the record demonstrates that the Petitioner's program satisfies the cultural component. The record contains structured lesson plans as well as teacher statements establishing that the international cultural exchange teachers introduce students to the teachers' home country, in this instance Spain, traditional arts and crafts, games, folk songs and tales, cuisine, holidays, and other aspects of their culture. The teachers also prepare cultural events and programs open to the public such as live musical performances by Spanish entertainers. These materials substantiate the Petitioner's statement that its program "continuously and simultaneously transmits the culture of Spain through the performance of [the Beneficiaries'] job duties." The Petitioner has established that its program meets the cultural component.

#### C. The Work Component

Lastly, a program beneficiary's employment or training in the United States must be tied to the program's cultural component. A beneficiary's work may not be independent of the program's cultural component. 8 C.F.R. § 214.2(q)(3)(iii)(C). In fact, the previous regulatory provision appears to state the link, albeit in reverse, more forcefully: the cultural component must be "an essential and integral part of [a beneficiary's] employment or training." 8 C.F.R. § 214.2(q)(3)(iii)(B). Put another way, a beneficiary's work "must serve as the vehicle to achieve"

the program's cultural objectives, and the cultural offerings "must result from" a beneficiary's employment or training with the petitioning employer. 8 C.F.R. § 214.2(q)(3)(iii)(C).

The Petitioner has 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. The lesson plans for various grade levels and subjects in the record of proceedings incorporate Spanish cultural themes and demonstrate that the Beneficiaries "continuously transmit Spanish culture through the performance of their job duties." The evidence reflects that the Petitioner is not seeking to employ the Beneficiaries solely to teach foreign language classes as part of a traditional curriculum of language instruction but rather as teachers in a dual immersion program which will "utilize curriculum and content areas as the vehicle to transmit language, culture, customs, heritage, traditions, etc. to American students" who will "learn the content areas by and through learning about Spain, Spanish history, Spanish customs, food, festivals, literature and dance." While the Beneficiaries' duties certainly include non-cultural activities that are common to all elementary school teachers, we find sufficient evidence to establish that the cultural component of the immersion program is an "essential and integral part" of the Beneficiaries' work. 8 C.F.R. § 214.2(q)(3)(iii)(B)-(C).

The Director correctly determined that the Petitioner satisfied the three requirements of 8 C.F.R. § 214.2(q)(3)(iii) and thus properly approved the petition for an international cultural exchange program.

#### D. Duration of the Program

An approved Q petition is valid "for the length of the approved program or fifteen (15) months, whichever is shorter." 8 C.F.R. § 214.2(q)(7)(iii). The regulations define the program's duration as "the time in which a qualified employer is conducting an approved international cultural exchange program in the manner as established by the employer's petition for program approval, provided that the period of time does not exceed 15 months." 8 C.F.R. § 214.2(q)(1)(iii).

Here, the Petitioner has requested that all four Beneficiaries be granted Q-1 classification for a period of 15 months, but it is not clear in this record whether the Petitioner's school-based cultural program runs 15 straight months, or some other interval such as an academic school year (ostensibly less than 15 months).<sup>3</sup> For example, we cannot determine from the record whether the Beneficiaries are participating in the cultural program during the summer break between academic school years. As such, we will remand the matter to the Director to develop the record as necessary and to determine the duration of the program.

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<sup>3</sup> The 2014-2015 School Event Calendar indicated that the academic year began on August 25, 2014, and ended on June 5, 2015. The school's May 1, 2015, newsletter indicated that, in June, it would hold a Spanish Immersion Program.

### III. CONCLUSION

In visa petition proceedings, it is the Petitioner's 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). Here, that burden has been met. Accordingly, we will affirm the Director's decision and approve the petition.

**ORDER:** The initial decision of the Director, Vermont Service Center, dated August 19, 2015, is affirmed.

**FURTHER ORDER:** The matter is remanded to the Director to determine the program duration.

Cite as *Matter of R-C-C-S-D-*, Adopted Decision 2016-04 (AAO Oct. 24, 2016)