

9 FAM 41.57 NOTES

*(CT:VISA-1698; 09-20-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.57 N1 INTRODUCTION

(CT:VISA-1153; 02-13-2009)

The Q visa classification was created at INA 101(a)(15)(Q) by section 208 of the Immigration Act of 1990 (Public Law 101-649 of November 29, 1990) specifically for participants in international cultural exchange programs. The Attorney General was granted authority to approve cultural exchange programs for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien participant's country of nationality. A Q alien must be the beneficiary of a petition approved by the Department of Homeland Security (DHS) prior to visa issuance.

9 FAM 41.57 N2 REQUIREMENTS FOR Q CLASSIFICATION

(CT:VISA-1698; 09-20-2011)

The four main elements for qualifying for Q nonimmigrant status are an:

- (1) Eligible Petitioner (see 9 FAM 41.57 N3 below);
- (2) Approved International Cultural Exchange Program (see 9 FAM 41.57 N4 below);
- (3) Eligible participant (see 9 FAM 41.57 N5 below); and
- (4) Approved petition (see 9 FAM 41.57 N6 and 9 FAM 41.57 N9 below).

9 FAM 41.57 N3 ELIGIBILITY OF PETITIONER

(CT:VISA-1698; 09-20-2011)

The petitioner must be either a qualified employer or its designated agent.

9 FAM 41.57 N3.1 Requirements for a Qualified

Employer

(CT:VISA-1698; 09-20-2011)

A qualified employer is a U.S. or foreign firm, corporation, non-profit organization, or other legal entity including its U.S. branches, subsidiaries, affiliates, and franchises, which administers a designated international cultural exchange program. To establish eligibility as a qualified employer, an employer must:

- (1) Have the ability to maintain an established international cultural exchange program;
- (2) Have designated a qualified employee as a representative responsible for administering the program and serving as liaison with DHS;
- (3) Currently be doing business (i.e., the regular, systematic, and continuous provision of goods and/or services, including lectures, seminars, and other types of cultural programs) in the United States (the employer must therefore have employees and not merely be an agent or office.) See 8 C.F.R. 214.2(q)(1);
- (4) Certify that the participant wages and working conditions are comparable to those accorded local domestic workers similarly employed; and
- (5) Must have the financial ability to remunerate the participant.

9 FAM 41.57 N3.2 Requirements for a Designated Agent of a Qualified Employer

(CT:VISA-1698; 09-20-2011)

In order to qualify as a petitioner, a designated agent of the qualified employer must be:

- (1) Employed by the qualified employer on a permanent basis in an executive or managerial capacity; and
- (2) A U.S. citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence under INA 210 or 245A. See 8 C.F.R. 214.2(q)(1).

9 FAM 41.57 N4 REQUIREMENTS FOR APPROVING INTERNATIONAL CULTURAL EXCHANGE PROGRAMS

(CT:VISA-1373; 11-09-2009)

The Department of Homeland Security (DHS) designates an international cultural exchange program through the Form I-129, Petition for a Nonimmigrant Worker, process. (See 9 FAM 41.57 N7 below.) The program must meet the following requirements:

- (1) The culture sharing must take place in a school, museum, business, or other establishment where the 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 which take place in a private home or an isolated business setting to which the public does not have direct access do not qualify;
- (2) The program must have a cultural component which is an essential and integral part of the participant's employment or training. It must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, traditions, and/or other cultural attributes (arts, literature, language) of the alien's country of nationality. Structured instructional activities, such as courses or lecture series, addressing the above subjects, are deemed acceptable cultural components; and
- (3) The alien participant's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. It must serve as the vehicle to achieve the objectives of the cultural component of the program. The sharing of the culture of the Q nonimmigrant's country of nationality must result from his or her employment or training with the qualified employer in the United States.

9 FAM 41.57 N5 ELIGIBILITY OF PARTICIPANTS

9 FAM 41.57 N5.1 Requirements for Alien Participants

(CT:VISA-1698; 09-20-2011)

Participants in Q cultural exchange programs must meet the following requirements:

- (1) The alien must be at least 18 years of age at the time the petition is filed;
- (2) The alien must be qualified to perform the service or labor or receive the training stated in the petition;
- (3) The alien must have the ability to communicate effectively about

- the cultural attributes of his or her country of nationality with the American public; and
- (4) If the alien has previously spent 15 months in the United States as a Q nonimmigrant, then he or she must have resided and been physically present outside the United States for the immediate prior year. (See 9 FAM 41.57 N10 below.)

9 FAM 41.57 N5.2 Country of Alien's Nationality

(TL:VISA-64; 08-07-1992)

The country of nationality is the country of which the alien was a national at the time he or she applied for status as an international cultural exchange visitor.

9 FAM 41.57 N5.3 Residence Abroad

(CT:VISA-1698; 09-20-2011)

A Q nonimmigrant must establish to the satisfaction of the consular officer that he or she has a residence outside the United States which he or she has no intention of abandoning. Therefore, Q visa applicants are subject to INA 214(b).

9 FAM 41.57 N6 SIGNIFICANCE OF APPROVED PETITION

9 FAM 41.57 N6.1 Department of Homeland Security (DHS) Responsible for Adjudicating Q Petitions

(CT:VISA-700; 02-15-2005)

Every Q alien must be the beneficiary of a petition, approved by DHS, prior to visa issuance or, in the case of visa-exempt aliens, admission into the United States. By mandating a preliminary petition, Congress placed responsibility and authority with DHS to determine whether the requirements for Q status which are examined in the petition process have been met.

9 FAM 41.57 N6.2 Approved Petition Is Prima Facie Evidence of Entitlement to Q Classification

(CT:VISA-1698; 09-20-2011)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker (which can be verified through PIMS) is, in itself, to be considered by consular officers as prima facie evidence that the requirements for Q classification have been met. Consular officers do not have the authority to question the approval of Q petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of petitions approved by DHS are valid, and involve bona fide establishments, relationships, and individual qualifications, which conform to regulations in effect at the time the petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility. If the consular officer has reason to believe, based upon information developed during the visa interview or other evidence which was not available to DHS, that the beneficiary may not be entitled to status, the consular officer may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 41.57 N6.3 Referring Approved Q Petition to U.S. Citizenship and Immigration Services (USCIS) for Reconsideration

(CT:VISA-1698; 09-20-2011)

You should consider all approved Q petitions in light of these Notes, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, lack of qualification on the part of the beneficiary, or of previously unknown facts, which might alter USCIS's finding before requesting review of a Form I-129, Petition for a Nonimmigrant Worker, approval. When seeking reconsideration, you must, under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet – Kentucky Consular Center, forward the Form I-129 application, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the approving USCIS office. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. Copies of all

supporting documents should be scanned into the CCD record on each case submitted for revocation. The Petition Information Management Service (PIMS) record of the Form I-129 will be used for verification of the petition.

9 FAM 41.57 N7 PROCEDURE FOR ISSUING Q VISAS

9 FAM 41.57 N7.1 Evidence Forming Basis for Q Visa Issuance

(CT:VISA-1698; 09-20-2011)

- a. The basis for Q visa eligibility consists of an approved Form I-129, Petition for a Nonimmigrant Worker, which must be verified through PIMS before issuing a visa. The Form I-797 is no longer required to be presented to a consular officer at the time of the applicant's interview.
- b. Posts must use the electronic PIMS record created by the KCC to verify petition approval. Posts are able to access the details of approved nonimmigrant visa (NIV) petitions through the CCD, through the PIMS Petition Report.
- c. Though no longer required, a valid Form I-797 will include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving Department of Homeland Security (DHS) office (the paper Form I-797 is an unsigned computer-generated form). The petition (Form I-129) must be confirmed and adjudication processing initiated through PIMS. In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. You may not authorize a petition-based NIV without verification of petition approval through PIMS, even though an applicant may possess a valid Form I-797.

9 FAM 41.57 N7.2 Petition Approval

(CT:VISA-1698; 09-20-2011)

- a. The approval of a petition by the Department of Homeland Security (DHS) or by the Department of Labor does not establish that the alien is eligible to receive a nonimmigrant visa (NIV). You may not authorize a petition-based NIV without verification of petition approval through PIMS.
- b. PIMS is the sole source of confirmation that a petition for a visa has been

approved. Verification in PIMS is prima facie evidence of entitlement to Q classification.

- c. You must suspend action on an alien's application and submit a report to the approving DHS office if you know or have reason to believe that an alien applying for a visa under INA 101(a)(15)(Q) is not entitled to the classification as approved.

9 FAM 41.57 N7.3 Consular Consolidated Database (CCD) Access to Approved Nonimmigrant Visa (NIV) Petitions

(CT:VISA-1698; 09-20-2011)

- a. Petition Information Management Service (PIMS) is the sole source of confirmation that a petition for a visa has been approved. Verification in PIMS is prima facie evidence of entitlement to Q classification.
- b. Posts must use the electronic PIMS record created by the Kentucky Consular Center (KCC) to verify petition approval. Posts are able to access the details of approved Nonimmigrant Visa (NIV) petitions through the Consular Consolidated Database (CCD). All users with roles that allow access to the current NIV Petitioner Applicant report will be able to see this information. The report is called the PIMS Petition Report and is listed under a sub-category of the NIV menu called "NIV Petitions." This change allows all information on a petitioner, petition, and/or beneficiary to be linked through a centrally managed CCD service.
- c. The electronic PIMS record created by the KCC must be used to determine petition approval and visa eligibility. The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, the KCC FPU has provided informational memos on a large percentage of these petitioners. Each new, approved petition is linked to a base petitioner record, allowing superior tracking of NIV petitioner and petition information. As a result of this change, the KCC has ceased e-mailing scanned copies of approved NIV petitions to posts.
- d. If you are unable to immediately locate information on a specific petition, you must send an e-mail to PIMS@state.gov. KCC's FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within 2 working days. You may submit your request to KCC only within five (5) working days of the scheduled interview date and you must have checked PIMS before submitting to KCC. KCC will check the USCIS CLAIMS database, and will upload the CLAIMS report into PIMS so that you can proceed with the scheduled interview. KCC will not process PIMS requests submitted by post prior to

the five day window. Please be sure to conduct a PIMS query before sending in these special requests, in order to reduce KCC's workload. Posts may use approved Forms I-129 and Forms I-797 presented at post as sufficient proof to schedule an appointment, or may schedule an appointment based on the applicant's confirmation that the petition has been approved, but only PIMS is sufficient evidence for visa adjudication.

9 FAM 41.57 N7.4 Validity of Q Visas

(CT:VISA-1698; 09-20-2011)

- a. The validity of a Q visa may not exceed the validity period of the petition approved to accord or extend Q status. If the period of reciprocity shown in Visa Reciprocity and Country Documents Finder is less than the validity period of the approved petition or extension of stay, it shall prevail.
- b. Posts are authorized to accept applications and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the approved petition. Post must inform applicants verbally and in writing that they can only use the visa to apply for entry to the United States starting ten days prior to the beginning of the approved status period noted on their approved petition. In addition, such visas must be annotated, "Not valid until (ten days prior to the petition validity date.)"

9 FAM 41.57 N7.5 Annotating Q Visas

(CT:VISA-1698; 09-20-2011)

Posts should annotate the number of the alien's approved petition on the visa, followed by the name and location of the alien's employer.

9 FAM 41.57 N7.6 Issuing Single Q Visa Based on More Than One Petition

(CT:VISA-1698; 09-20-2011)

If the alien is the beneficiary of two or more Q petitions and does not plan to depart from the United States between engagements, consular officers may issue a single Q visa valid until the expiration date of the last expiring petition, reciprocity permitting. The required annotations (see 9 FAM 41.57 N7.5 above) from all petitions should be placed on the visa.

9 FAM 41.57 N7.7 Limitation of Q Visas

(CT:VISA-1698; 09-20-2011)

Consular officers may restrict visa validity in some cases to less than the

period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the annotations described in 9 FAM 41.57 N7.5 above, posts should insert the following:

“PETITION VALID/STAY AUTHORIZED (whichever is applicable) TO (date)”

9 FAM 41.57 N7.8 Reissuing Q Visas

(CT:VISA-1698; 09-20-2011)

When a Q visa is limited by reciprocity to a period of validity less than the validity of the petition or authorized period of stay, consular officers may reissue the visa any number of times within the period allowable. If a fee is prescribed by the Visa Reciprocity and Country Documents Finder, posts must collect the fee for each reissuance of the Q visa.

9 FAM 41.57 N8 VALIDITY OF APPROVED PETITION AND LENGTH OF STAY

9 FAM 41.57 N8.1 Petition Validity

(TL:VISA-64; 08-07-1992)

An approved petition for an alien classified under INA 101(a)(15)(Q) is valid for the length of the approved program or for 15 months, whichever is shorter.

9 FAM 41.57 N8.2 Length of Stay

(CT:VISA-1698; 09-20-2011)

A beneficiary may be admitted to the United States during the validity period of the petition. The alien’s total period of stay in the United States in Q-1 visa status may not exceed 15 months.

9 FAM 41.57 N8.3 Extension of Stay

(CT:VISA-1698; 09-20-2011)

The authorized stay of an alien in Q status may be extended by DHS, up to the 15-month limit. However, a new petition must be filed and approved for each extension.

9 FAM 41.57 N9 PETITION PROCEDURES

9 FAM 41.57 N9.1 Same Petition Used for Approval of Program and for Participants

(CT:VISA-1698; 09-20-2011)

A qualified employer or its designated agent must file a Form I-129, Petition for a Nonimmigrant Worker, either with the DHS Service Center having jurisdiction over the employer's headquarters, or the DHS Service Center having jurisdiction over the area where the alien will be employed or receive training. This petition is filed for the dual purpose of obtaining approval of an international cultural exchange program and for conferring Q status on the program's alien participants. The petition for Q nonimmigrants will be considered only if the employer's concurrent petition for the approval of the international cultural exchange program is granted. Subsequent to the approval of the initial petition, the qualified employer must file a new petition each time the employer wishes to bring in additional international cultural exchange visitors.

9 FAM 41.57 N9.2 Multiple Beneficiaries

(CT:VISA-1698; 09-20-2011)

The petitioner may include more than one beneficiary on the petition. The petitioner must provide the date of birth, nationality, education, title and job description for each alien along with a certification that he or she can perform the work. See 8 CFR 212.2(q)(4). If an employer wishes to employ additional Q-1 aliens other than those specified on the original petition, a new petition must be filed.

9 FAM 41.57 N9.3 Substituting Beneficiaries

(CT:VISA-1698; 09-20-2011)

- a. A qualified employer may replace or substitute participants on a previously approved petition for the remainder of the program without filing a new Form I-129, Petition for a Nonimmigrant Worker. The substituting participant(s) must meet the qualification requirements described in 9 FAM 41.57 N5 above.
- b. To request a substitution or replacement, the petitioner shall notify the consular office in writing at which the alien will apply for a visa or, in the case of visa-exempt aliens, the port of entry (POE) where the alien will apply for admission. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective participant and must certify that he or she is qualified to fill the position described in the approved petition. The petitioner must also indicate the alien's wages and certify that the alien is being offered prevailing wages

and working conditions.

9 FAM 41.57 N9.4 Services in More Than One Location

(CT:VISA-1698; 09-20-2011)

The beneficiary may engage in employment or training in different locations for the same employer. In such a case, the petition must include an itinerary with the dates and locations of the services, labor, or training to be performed.

9 FAM 41.57 N9.5 Services for More Than One Employer

(CT:VISA-1698; 09-20-2011)

The employee may provide services or labor for, or receive training from, more than one employer. Each employer must file a separate petition with the jurisdictional DHS Service Center. An alien may work or train part-time for multiple employers provided that each employer has an approved petition for the alien. For the issuance of a single visa to the beneficiary of more than one Q petition, (see 9 FAM 41.57 N10.7 below).

9 FAM 41.57 N9.6 Change of Employers

(CT:VISA-1698; 09-20-2011)

If a Q nonimmigrant in the United States seeks to change employers, the new employer must file a petition. The total period of time the Q nonimmigrant may stay in the United States remains limited to 15 months. (See 9 FAM 41.57 N8.2 above.)

9 FAM 41.57 N10 LIMITATION ON READMISSION

(CT:VISA-1698; 09-20-2011)

An alien who has spent 15 months in the United States under INA 101(a)(15)(Q) may not be issued a visa or be readmitted under the Q classification, nor may a Q petition be approved for the alien, unless he or she has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for business or pleasure during the immediate prior year do not break the continuity of the one-year foreign residence, but do not count toward the fulfillment of that requirement.

9 FAM 41.57 N11 DEPENDENTS OF INTERNATIONAL CULTURAL EXCHANGE VISITORS ARE CLASSIFIABLE B-2

(CT:VISA-1698; 09-20-2011)

INA 101(a)(15)(Q) does not provide derivative status for the spouse and children of international cultural exchange visitors. Therefore, a spouse, child, or other alien who wishes to accompany or follow to join a Q nonimmigrant must independently qualify for a different visa classification, such as B1/B2, if he or she is legally able to.

9 FAM 41.57 N12 OTHER EMPLOYMENT RESTRICTED

(CT:VISA-1698; 09-20-2011)

Q aliens may be employed only by the petitioner or petitioners through which he or she attained Q status. Employment outside the specific program described in the approved petition(s) is in violation of the alien's Q nonimmigrant status.