

2-8-2013

The Wonderful World of Disney Visas

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Recommended Citation

Kit Johnson, *The Wonderful World of Disney Visas*, 63 Fla. L. Rev. 915 (2011).
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THE WONDERFUL WORLD OF DISNEY VISAS

Kit Johnson *

Abstract

International workers play an important role in perpetuating the carefully crafted fantasy that to visit the Walt Disney World Resort in Orlando, Florida is to be transported to far-off destinations around the globe. This Article examines how Disney has filled its need for these workers in two ways. For one, Disney has used a blend of chutzpah and ingenuity to forge new federal law establishing the Q visa. Additionally, Disney has dexterously used the existing J visa, along with an on-resort academic program, to bring international workers to Florida as students.

An examination of Disney's immigration practices offers insight into the larger questions of who designs and benefits from immigration laws. These questions are particularly worthy of attention given the current call for federal immigration reform.

I proceed by detailing the history of the Q visa law, which was designed by Disney for its own needs—namely, to authorize “cultural representatives” to travel to the United States for short durations and to work in jobs where they share aspects of their home countries with the American public. This present study is the first historical treatment of the Q visa in the literature. I then discuss what Disney has appropriated from its custom-designed immigration program. Next, I look at the J visa and how Disney has exploited it by analyzing the history of the J visa, which was created during the Cold War to cultivate an appreciation for and familiarity with American society. I then look at Disney's International College Program, which is intended to provide compliance with the J visa law while ensuring a ready stream of available labor for Disney's mammoth Florida resort operations. A thorough exploration of the facts shows that Disney's International College Program is not consistent with the original statutory intent. Scrutiny of Disney's Q and J visa programs highlights weaknesses in our current immigration system and illustrates how those flaws might affect future immigration reforms.

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I. INTRODUCTION: TALE AS OLD AS TIME¹

Philippe, a citizen of France, came to Florida to study wines. He not only studies, he works. In fact, he works a lot. Five to six days a week, you can find him at the Blizzard Beach hot dog stand in Walt Disney World. His English is not considered good enough to interact with the guests on a regular basis, so Philippe fills soft drink orders. On his one day off each week, he takes a class called “Wines of the World” through the Disney International College Program. Like hundreds of other Walt Disney World Resort employees, Philippe is able to work in the United States thanks to a student visa.

The story of Philippe² is an embodiment of the American dream. Not his American dream, of course. This is Disney’s American dream. In 1923, Walt Disney came to Hollywood with \$40 in his pocket.³ As of 2009, the yearly revenues of his eponymous company exceeded \$36 billion.⁴ Almost 30% of those revenues came from the company’s theme parks,⁵ the largest of which is Walt Disney World.⁶ There is a direct connection between that revenue and the thousands of internationals who come to the Florida park each year, admitted to the United States on the student J visa as well as the Disney-designed Q visa for “cultural exchange” workers. The workers are needed to run the resort’s attractions, staff its concessions, and pick up its garbage. They offer inexpensive labor and have themselves become part of the Walt Disney World experience.

This Article takes a close look at Disney’s immigration practices. It uncovers how Disney has used the legislative process to create an immigration scheme—the Q visa—inuring almost exclusively to its own benefit. It also explores how Disney has taken singular advantage of a provision of more ordinary immigration law—the J visa—and twisted it far beyond its historically intended reach.

Disney’s legislative and legal successes stem, in no small part, from the truism uttered by the English novelist Samuel Richardson in 1740: “[P]ower and riches never want advocates.”⁷ Or, as put by TNT’s original series *Leverage*: “The rich and powerful take what they want.”⁸

1. *Tale as Old as Time* is a song from the Disney film *Beauty and the Beast*. ANGELA LANSBURY, *Tale as Old as Time*, on *BEAUTY AND THE BEAST* (Walt Disney Records 1991).

2. Much of the research for this Article is the result of personal interviews conducted by the Author with current and former Walt Disney World cast members. Names and other identifying information have been changed to disguise the identities of individuals interviewed. Notes are on file with the Author.

3. DANIEL GROSS, *FORBES: GREATEST BUSINESS STORIES OF ALL TIME* 126 (1996).

4. Press Release, Walt Disney Co., *The Walt Disney Co. Reports Earnings for Fiscal Year 2009*, at 2 (Nov. 12, 2009), available at http://corporate.disney.go.com/investors/quarterly_earnings/2009_q4.pdf.

5. *Id.* (reporting park and resort revenues of \$10.7 billion for fiscal year 2009).

6. WALT DISNEY CO., *FACTBOOK 2009*, at 10 (2010).

7. SAMUEL RICHARDSON, *PAMELA; OR, VIRTUE REWARDED* 92 (Peter Sabor ed., Penguin Books 1989) (1740).

8. *E.g.*, *Leverage* (TNT television broadcast July 15, 2009).

There can be no doubt that the Walt Disney Company wields both power and riches. It is the world's largest media conglomerate⁹ and has been ranked by American consumers as the fourth most respected company in the United States.¹⁰ As for advocates, Disney has been noted as having one of the largest legal teams in the world.¹¹ And those are only its paid advocates—Disney has long been making informal advocates out of legions of “children of all ages.” As a parent of two young boys, I can testify to the power held by the House of the Mouse.

Scrutiny of Disney's immigration practices provides a unique window into how immigration laws are enacted and how they fare in practice. This, in turn, sheds light on the immigration system as a whole. Immigration reform seems always to be just around the corner.¹² And before creating new law or reforming the old, it is useful to understand how such law can and has been shaped—both in its inception and after its enactment—to satisfy the interests of neither the political right nor the left, but rather to benefit that particular class that has no want of advocates.

II. HEIGH-HO:¹³ WORKING FOR DISNEY

Before jumping into the issue of whom the Walt Disney World Resort is hiring and how, it is important to understand the scale of the resort and the type of work necessary to keep it running.

Walt Disney World sits on 25,000 acres of land, making it roughly twice the size of Manhattan.¹⁴ The property houses four theme parks, two water parks, a sports complex, and more than two dozen hotels, along with scores of shops, restaurants, nightlife venues, and other attractions.

The resort opened in 1971 with the first of its four theme parks: the Magic Kingdom.¹⁵ The next park to open was Epcot in 1982, followed by

9. Hoover's Inc., *Hoover's In-Depth Company Records: The Walt Disney Company*, available at 2010 WLNR 12673096 (last updated June 23, 2010) (detailing the Disney media empire).

10. Laurie Burkitt, *America's Most Reputable Companies*, FORBES (Apr. 20, 2010), <http://www.forbes.com/2010/04/19/kraft-microsoft-google-pepsi-disney-kellogg-cmo-network-america-least-reputable-companies.html>.

11. Leigh Jackson, *Modern Magic*, LEGAL WK., Aug. 7, 2008, <http://www.legalweek.com/legal-week/interview/1181509/modern-magic> (“Disney maintains one of the largest legal teams in the world with 350 lawyers company-wide.”).

12. On September 29, 2010, Senators Robert Menendez and Patrick Leahy introduced Senate Bill 3932, the Comprehensive Immigration Reform Act of 2010. *See, e.g.*, Senator Patrick Leahy, Comment on the Comprehensive Immigration Reform Act of 2010 (Sept. 30, 2010) (transcript available at 2010 WLNR 19526208). Prior to the introduction of the Act, President Barack Obama publicly expressed the need for comprehensive immigration reform. *See, e.g.*, President Barack Obama, Remarks by the President on Comprehensive Immigration Reform at the American University School of International Service, Washington, D.C. (July 1, 2010) (transcript available at <http://www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform>).

13. *Heigh-Ho* is a song from the Disney movie *Snow White and the Seven Dwarfs*. ROY ATWELL ET AL., *Heigh-Ho, on SNOW WHITE AND THE SEVEN DWARFS* (Walt Disney 2008).

14. JENNIE HESS ET AL., FODOR'S WALT DISNEY WORLD 2010, at 142 (2010).

15. ALAN BRYMAN, THE DISNEYIZATION OF SOCIETY 3 (2004).

Disney–MGM Studios in 1989 and Disney’s Animal Kingdom in 1998.¹⁶ While Disney’s J visa international students work in all four theme parks, its Q visa cultural exchange visitors work principally at Epcot and at Animal Kingdom.

Disney requires a staggering number of workers to keep the resort running. Some 65,000 people are currently employed there.¹⁷ About 30,000 are hidden from the view of guests.¹⁸ These “backstage” employees include dishwashers, landscapers, maintenance technicians, and business executives.¹⁹ Lawyers, who have no small part in making the magic happen, are part of the backstage crew.²⁰

The remaining 35,000 or so resort employees hold “guest-facing” positions, where they are visible to and interact with resort visitors. In Disney-speak, these employees are “onstage,” and thus they are dubbed “cast members”; instead of jobs, cast members have “roles” for which they have “auditioned” rather than interviewed.²¹ They do not wear uniforms but “costumes.”²²

Critical to onstage employment is adherence to the “Disney look”²³ and having the willingness to project the “warmth and commitment” considered essential to the resort’s unique feel.²⁴ As set forth in one Disney manual:

For men, it means no facial hair, a conservative haircut with no hair over the ears or the collar, no earrings, no exposed tattoos, and no jeans. For women, no extremes in dying hair or in makeup, and no long fingernails. We want a conservative, professional look; we want our employees to be warm, outgoing, and sincere. We don’t want guests to be distracted by oddities or mannerisms of the cast members.²⁵

All of the resort’s international cast members, approximately 3,500 in total,²⁶ occupy onstage roles.²⁷ As roughly 10% of the resort’s onstage

16. *Id.*

17. Telephone Interview with Dr. Duncan Dickson, Assistant Professor, Rosen Coll. of Hospitality Mgmt., Univ. of Cent. Fla., in Orlando, Fla. (Mar. 16, 2010) [hereinafter Dickson Interview]; see also Jason Garcia, *Parks’ New Chief Faces Big Challenges*, ORLANDO SENTINEL, Dec. 29, 2009, at A1 (estimating the resort’s workforce to be 60,000 in Central Florida).

18. Dickson Interview, *supra* note 17.

19. *Id.*; see also BRYMAN, *supra* note 15, at 11 box 1.2 (providing a glossary of Disney language).

20. Jackson, *supra* note 11 (“Disney maintains one of the largest legal teams in the world with 350 lawyers company-wide.”).

21. See BRYMAN, *supra* note 15, at 11 box 1.2 (providing a glossary of Disney language).

22. *Id.*

23. *Academic Exchange Experience: The Disney Look (General Guidelines)*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/look_guidelines.html (last visited Feb. 11, 2011).

24. BRYMAN, *supra* note 15, at 107.

25. *Id.* at 124.

26. Lydia Arledge, an international education consultant for Disney, notes that there are 2,500

workforce, the international labor corps is carefully prescreened through overseas auditions to ensure that they meet Disney's exacting standards.²⁸

The types of jobs performed by international cast members are varied and, in some instances, dependent on the type of visa issued. For now, it is sufficient to understand that onstage workers include concierges, character performers, salespeople, quick-serve restaurant workers, and lifeguards.²⁹

III. WHEN YOU WISH UPON A STAR:³⁰ THE Q VISA AND THE DISNEY CULTURAL REPRESENTATIVE PROGRAM

The Q visa is the cornerstone of international hiring at Walt Disney World. The visa's parentage is unquestioned—it is commonly known as “the Disney visa”—but the history of how the visa came to be has never been fully explored. This section details how the Q visa program became law, sets forth the current statutory and regulatory requirements for Q visas, assesses Walt Disney World's compliance with those requirements, and examines what Disney stood to gain—and has gained—from the Q visa.

The story of the Q visa is nothing short of a fairy tale—for Disney. For those seeking immigration reform, it may be more of a cautionary tale about the ability of an unusually skilled advocate to mold the law in order to benefit a single entity.

available slots, as determined by available beds in the Disney housing complexes, for Q visa participants and those J-1 participants in Summer Work Travel; she estimates another 1,000 J-1 international students work at Disney during each “season,” which indicates that even more international cast members (perhaps 4,500) come to Orlando each year. Interview with Lydia Arledge, Int'l Educ. Consultant, Walt Disney Co., in Greensboro, N.C. (Oct. 13, 2010) [hereinafter Arledge Interview]. For his part, Dickson estimated the international workforce to be less than 2,000. Dickson Interview, *supra* note 17. In 2001, one journalist reported that 1,500 international workers come to Disney each year. Richard Verrier, *Disney Disappoints Some Foreign Workers*, ORLANDO SENTINEL, July 22, 2001, at H1. It is clear that Disney is increasing its reliance on international workers.

27. Dickson Interview, *supra* note 17; see also Defendant Walt Disney World Co.'s Motion for Summary Final Judgment and Supporting Memorandum of Law at 5, *Gupta v. Walt Disney World Co.*, No. 6:05-cv-1432-Orl-22UAM, 2007 WL 2002454 (M.D. Fla. July 5, 2007) (No. 6:05-cv-1432-Orl-ACC-JGG), 2006 WL 3911570, at *5 [hereinafter Disney MSJ].

28. See *Get Started/Apply Now*, DISNEY INT'L PROGRAMS, <https://www.disneyinternationalprograms.com/apply.html#this> (last visited Feb. 23, 2011).

29. *Academic Exchange Experience: Role Descriptions*, DISNEY INT'L PROGRAMS, https://www.disneyinternationalprograms.com/j1/experience_rolledescriptions.html (last visited Feb. 23, 2011).

30. *When You Wish upon a Star* is a song from the Disney movie *Pinocchio*. CLIFF EDWARDS, *When You Wish upon a Star*, on PINOCCHIO (Walt Disney Records 2001).

A. “*Something There that Wasn’t There Before*”:³¹ *Creating the Q Visa*

Before the Epcot theme park opened in 1982, Disney knew that it wanted cast members in the Epcot World Showcase area of the park to be from the countries represented in the showcase.³² The showcase houses pavilions representing eleven countries: Mexico, Norway, China, Germany, Italy, the United States, Japan, Morocco, France, the United Kingdom, and Canada.³³ The pavilions are situated in an arc around the park’s forty-acre lagoon,³⁴ where they are said to exist “side by side in exemplary amity.”³⁵ The architecture of each pavilion either replicates a genuine building or copies the “vernacular style” of the country represented.³⁶ Each pavilion is meant to exhibit a “microcosm”³⁷ of the country represented and includes opportunities to experience “native food, entertainment, culture, and arts and crafts.”³⁸ The pavilions are “designed to create the impression that the guest is in a foreign country and is surrounded by people in that country.”³⁹

Disney executives initially responded to the call for “authentic staffing”⁴⁰ at the World Showcase by establishing the World Showcase Fellowship Program.⁴¹ However, this was a small program that would have intermingled five to ten fellowship recipients among the hundreds of cast members stationed at certain areas of the pavilions.⁴² As a result, “guests would have [had] to be very, very lucky to see a Fellowship Representative. Or they would have [had] to ask to meet one.”⁴³

Dick Nunis, Disney’s president of Outdoor Entertainment, refused to accept the executives’ plan.⁴⁴ He could not see how the Epcot World Showcase could present the “history and heritage” of the countries represented without staffing the pavilions with cast members from those

31. “Something there that wasn’t there before” is a lyric from *Something There*, a song from the Disney film *Beauty and the Beast*. ANGELA LANSBURY, *Something There*, on BEAUTY AND THE BEAST (Walt Disney Records 1991).

32. Dickson Interview, *supra* note 17; *see also* Duncan Dickson, Who Are We Building This For? 2 (2001) (unpublished M.A. case study, School of Hotel Administration, Cornell University) (on file with author) [hereinafter Dickson Case Study].

33. HESS ET AL., *supra* note 14, at 97–98.

34. *Id.* at 97.

35. RICHARD R. BEARD, WALT DISNEY’S EPCOT: CREATING THE NEW WORLD OF TOMORROW 134 (1982).

36. EYEWITNESS TRAVEL GUIDES: WALT DISNEY WORLD RESORT & ORLANDO 50 (Aruna Ghose et al. eds., Dorling Kindersley Ltd. 2005) [hereinafter DK].

37. HESS ET AL., *supra* note 14, at 84.

38. *Id.* at 97. Goods sold at the pavilions must be actually produced in the country represented. Dickson Case Study, *supra* note 32, at 3.

39. Disney MSJ, *supra* note 27, at 22.

40. Dickson Case Study, *supra* note 32, at 2.

41. *Id.* at 3; BEARD, *supra* note 35, at 135; *see also* Verrier, *supra* note 26.

42. Dickson Case Study, *supra* note 32, at 3.

43. *Id.*

44. *Id.* at 2.

countries.⁴⁵ In response to Nunis' concerns, Duncan Dickson, Walt Disney World's director of Casting,⁴⁶ worked with the United States Information Agency to obtain a new J visa⁴⁷ designation for "cultural ambassadors" to come and serve as cast members in the Epcot World Showcase.⁴⁸ The result was 100% staffing from the countries represented.⁴⁹

By the late 1980s, however, Congress started to take a closer look at J visa programs and perceived abuses of those programs.⁵⁰ The General Accounting Office (GAO) was tasked with examining whether J visa programs were operating consistently with congressional intent.⁵¹ The GAO concluded that certain activities and programs were inconsistent with congressional intent, and their list of malfeasances included instances of participants employed as amusement park workers.⁵² The GAO wrote: "Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilutes the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes."⁵³

Some congressional representatives responded to the GAO report by voicing the idea that J visas should be eliminated altogether. Others wanted to see significant reforms in not only the J visa program, but also in immigration law generally.⁵⁴ It was clear that Congress was going to

45. *Id.* at 3.

46. *Rosen College of Hospitality Management: Biography of Dr. Duncan Dickson*, UNIV. OF CENT. FLA., http://www.hospitality.ucf.edu/faculty_ddickson.htm (last visited Feb. 24, 2011).

47. See 8 U.S.C. § 1101(a)(15)(J) (2006) (enumerating the requirements for obtaining a J visa); *infra* Part IV.B (discussing the J visa in the context of Disney's International College Program).

48. Dickson Interview, *supra* note 17.

49. Duncan Dickson, Teaching Notes: Who Are We Building This For? 4 (2001) (unpublished M.A. case study, School of Hotel Administration, Cornell University) (on file with author) [hereinafter Dickson Teaching Notes].

50. See Verrier, *supra* note 26 (discussing the Government Accountability Office's growing suspicion of the J visa program in the 1980s); see also *GAO Criticizes Exchange Visitor Programs*, 67 INTERPRETER RELEASES 315 (1990) (discussing the GAO's 1990 report of J-1 exchange programs). See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/NSIAD-90-61, U.S. INFORMATION AGENCY: INAPPROPRIATE USES OF EDUCATIONAL AND CULTURAL EXCHANGE VISAS (1990) (criticizing the U.S. Information Agency for failing to adequately oversee the J visa program). Dickson recalls the senator from Wyoming, Alan Simpson, particularly calling into question Disney's J visa programs. Dickson Interview, *supra* note 17.

51. Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 100-461, § 555, 102 Stat. 2268, 2268-37 (1988); see also U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 50, at 2 ("Public Law 100-461 required GAO to examine the J-visa program administered by the U.S. Information Agency . . .").

52. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 50, at 2-3.

53. *Id.* at 3.

54. In 1986, Congress enacted the Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.). The Immigration Reform and Control Act (IRCA) was largely a response to the problem of *illegal* immigration. See, e.g., Richard A. Johnson, *Twenty Years of the IRCA: The Urgent Need for an Updated Legislative Response to the Current Undocumented Immigrant Situation in the United States*, 21 GEO. IMMIGR.

engage in a full-scale reform of the country's immigration policy⁵⁵ and that Disney's program could be affected.⁵⁶

Organizations that were reliant on J visa students banded together to answer the calls for reform. However, Disney quickly realized that it was altogether different from other entities that were J visa beneficiaries.⁵⁷ Most significantly, Disney wasn't a nonprofit organization.⁵⁸

For Disney, it was a defining moment. Should it continue to advocate on behalf of J visas? Dickson, still the director of Casting and, at this point, the de facto chief visa officer for the resort, decided the company should strike out on its own.⁵⁹ And so it did.

Dickson recalls working with famed immigration attorney Ira Kurzban⁶⁰ and Disney's local immigration counsel, Tom Raleigh of Akerman Senterfitt,⁶¹ to draft an entirely new visa.⁶² Together they crafted a carefully worded and very narrow piece of legislation—one that would meet the needs of the Epcot World Showcase without creating a generalized work visa.⁶³ The visa they drafted applied only to

L.J. 239, 244 (2007). After the passage of the IRCA, Congress turned to reform of *legal* immigration. *See, e.g.*, Peter H. Schuck, *The Politics of Rapid Legal Change: Immigration Policy in the 1980s*, 6 *STUD. IN AM. POL. DEV.* 37, 64 (1992).

55. *See, e.g.*, Peter H. Schuck & Theodore Hsien Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979–1990*, 45 *STAN. L. REV.* 115, 116–17 (1992) (noting that the legislation ultimately enacted, including the IRCA and the Immigration Act of 1990, “renovated virtually the entire legal structure for handling immigration”).

56. Pete Carey & Steve Johnson, *Special Interests Shaped '90 Reform: Legislative Process Became 'Feeding Frenzy' for Lobbyists*, *SAN JOSE MERCURY NEWS* (San Jose, Calif.), May 31, 1993, at 1A; *see also* HELEN A. SKLAR & STUART L. FOLINSKY, *IMMIGRATION ACT OF 1990 TODAY* § 8:106 n.1 (Cora D. Tekach ed., 2005); Adam Green, *Section 208, New Classification for International Cultural Exchange Programs, Q Nonimmigrants*, in *UNDERSTANDING THE IMMIGRATION ACT OF 1990*, at 190, 190 (Paul Wickham Schmidt ed., 1991).

57. Dickson Interview, *supra* note 17.

58. *Id.*

59. *Id.* Dickson's timing couldn't have been better. The legislation ultimately enacted turned out to be the only legislation in the next twenty years where Congress achieved wide-scale expansion rather than contraction of U.S. immigration laws. *Cf.* Natalie Liem, *Mean What You Say, Say What You Mean: Defining the Aggravated Felony Deportation Grounds to Target More than Aggravated Felons*, 59 *FLA. L. REV.* 1071, 1076–78 (2007) (describing modern federal legislation restricting immigration).

60. Kurzban is the author of the key immigration law primer, *Kurzban's Immigration Law Sourcebook*, and is a well-known immigration attorney. *Attorney Profile for Ira J. Kurzban*, KURZBAN KURZBAN WEINGER TETZELI AND PRATT P.A., <http://www.kkwlaw.com/Bio/IraKurzban.asp> (last visited Feb. 24, 2011). Kurzban himself has no recollection of seeing the language of the proposed legislation prior to its enactment. Telephone Interview with Ira Kurzban, Attorney, Kurzban Kurzban Weinger Tetzeli and Pratt P.A. (Sept. 21, 2010) [hereinafter Kurzban Interview].

61. *Attorney Profile for Thomas L. Raleigh III*, AKERMAN SENTERFITT, <http://www.akerman.com/bios/bio.asp?id=404&name=Raleigh> (last visited Feb. 7, 2011).

62. Dickson Interview, *supra* note 17.

63. *Id.*; *see also* Verrier, *supra* note 26; *The Immigration Act of 1990 Analyzed: Part 6—The Remaining Nonimmigrant Visa Provisions*, 68 *INTERPRETER RELEASES* 69, 76 (1991) (noting that the legislation ultimately passed would be limited to Disney as well as other “organizations that strive to present authentic cultural programs, such as Russian circuses or Chinese acrobats”).

“international cultural exchange program[s]” in which the international worker would, as part of his employment, share “the history, culture, and traditions of the country of the alien’s nationality.”⁶⁴ The legislation was intentionally narrow so as to meet Disney’s needs without qualifying a “wide range of other activities . . . as cultural exchanges.”⁶⁵

Having drafted this provision, Dickson began the process of securing congressional and senatorial buy-in. He started with the Florida congressman whose district included Disney World, Bill McCollum,⁶⁶ as well as the congressman whose district included Disney’s corporate headquarters in Burbank, California, Howard Berman.⁶⁷ Dickson also worked directly with the office of Bruce Morrison, a Connecticut congressman who was then the chair of the House immigration subcommittee of the House Judiciary Committee.⁶⁸

Garnering Morrison’s support was not difficult. The congressman approached this period of immigration reform from the “basic principle that the more people who will get something from a piece of legislation, the broader the support will be.”⁶⁹ He sought to “institutionalize” what constituents liked about immigration, hoping to “logroll his way to a majority with an omnibus bill built around a coalition of intense, pro-immigration special interests.”⁷⁰

Detractors described this period of legislative reform as “a circus” or a “feeding frenzy at the trough,” with special interests claiming nearly every section of the developing legislation.⁷¹ Morrison’s response? “For those academics who never passed any legislation, let them do better. . . . This is legislation that people told me never would pass. . . . We did it by understanding the politics of immigration better.”⁷²

While the immigration legislation was moving forward at a quick pace, Morrison was gearing up for a gubernatorial bid.⁷³ He began directing the details of the immigration bill over a car phone from the campaign trail in Connecticut.⁷⁴ Dickson, for his part, was turned over to Morrison’s aide.⁷⁵

64. 8 U.S.C. § 1101(a)(15)(Q)(i) (2006).

65. Carey & Johnson, *supra* note 56.

66. Bill McCollum previously served as Florida’s Attorney General and made an unsuccessful bid for the state’s governorship in 2010. Interestingly, he recently proposed legislation that would go “one step further” than the law enforcement measures against illegal immigrants proposed in Arizona in the now infamous Senate Bill 1070. See Barbara Liston, *Florida AG Proposes Tougher State Immigration Law*, REUTERS NEWS, Aug. 11, 2010 (internal quotation marks omitted). McCollum declined to speak with me about the history of the Q visa.

67. Dickson Interview, *supra* note 17; see also Carey & Johnson, *supra* note 56. Congressman Berman, too, declined to speak with me about the history of the Q visa.

68. See Carey & Johnson, *supra* note 56.

69. *Id.*

70. Schuck, *supra* note 54, at 69.

71. Carey & Johnson, *supra* note 56.

72. *Id.* (internal quotation marks omitted).

73. *Id.*

74. *Id.*

75. Dickson Interview, *supra* note 17.

Dickson quickly learned that the congressional aides would be the secret to getting his new visa enacted as part of the larger immigration bill.⁷⁶ He began working with all of the aides to congressmen on the immigration subcommittee to develop his visa plan.⁷⁷

Dickson did not limit his efforts to the House; he also spoke to senators.⁷⁸ He achieved agreement from senators that if the visa proposal made it into the House bill, the Senate would not fight it.⁷⁹ This was no small achievement, given the “delicate” nature of the Senate–House negotiations regarding the bill.⁸⁰ Indeed, the tense Senate–House negotiations resulted in the immigration bill being passed with “only hours left” in the 1990 legislative session, after which it was promptly signed into law by President George H.W. Bush.⁸¹

It was November 29, 1990, when the Immigration Act of 1990, the “most significant reform of the legal immigration system of the United States in nearly 40 years,”⁸² became law.⁸³ Dickson’s proposal was codified in the Act as the Q visa and was quickly dubbed the “Disney visa” by Ira Kurzban.⁸⁴

B. *The Bare Necessities*:⁸⁵ Legal Requirements for Q Visas

The Q visa is designed for participants in “an international cultural exchange program approved . . . 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.”⁸⁶

Such visas are only available to nonimmigrants, meaning those coming to the United States temporarily, as opposed to indefinitely. In contrast to the J visa,⁸⁷ however, it is a *work*-based visa, not a *study*-based visa. This difference is emphasized by the federal regulations governing Q visas, which specify the types of employers qualified to hire Q visa beneficiaries,

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. Schuck, *supra* note 54, at 76; *see also id.* at 76–80 (detailing the extensive negotiations between, and compromises made by, the House and Senate regarding the bill).

81. Carey & Johnson, *supra* note 56. Interestingly, the White House, the Attorney General, and the Immigration and Naturalization Service did not play a significant role in shaping this legislative process. Schuck, *supra* note 54, at 76.

82. Paul Wickham Schmidt, *Overview of the Immigration Act of 1990*, in UNDERSTANDING THE IMMIGRATION ACT OF 1990, at 1, 1 (Paul Wickham Schmidt ed., 1991).

83. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended at 8 U.S.C. § 1101 (2006)).

84. Carey & Johnson, *supra* note 56; Dickson Interview, *supra* note 17; Kurzban Interview, *supra* note 60.

85. *The Bare Necessities* is a song from the Disney movie *The Jungle Book*. BRUCE REITHERMAN, *The Bare Necessities*, on THE JUNGLE BOOK (Walt Disney Records 1967).

86. 8 U.S.C. § 1101(a)(15)(Q) (2006) (emphasis added).

87. *See infra* part IV.B.

applicable programs, applicant qualifications, and the duration of employment.⁸⁸

Only qualified employers “doing business” may file applications on behalf of Q visa beneficiaries.⁸⁹ “Doing business means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs).”⁹⁰

Such employers must show that their cultural exchange program has a cultural component that “is an essential and integral part of the international cultural exchange visitor’s employment or training.”⁹¹ Moreover, the program 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.”⁹²

The program must also be accessible to the American public, taking “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.”⁹³ And the employment or training of Q visa recipients cannot “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.”⁹⁴

It is also incumbent upon employers to certify that cultural exchange visitors will be “offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.”⁹⁵ Employers do not, however, have to prove that qualified domestic workers are unattainable, which is a requirement for other nonimmigrant work visas.⁹⁶

As for Q visa recipients, an “essential element” of their “employment or training” must be “sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien’s country of nationality.”⁹⁷ Accordingly, the beneficiary must have the “ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public.”⁹⁸

Q visa recipients are limited to a fifteen-month stay in the United States.⁹⁹ However, they can be admitted to the United States on a Q visa

88. *See generally* 8 C.F.R. § 214.2(q) (2010).

89. *Id.* § 214.2(q)(4)(C).

90. *Id.* § 214.2(q)(1)(iii) (emphasis omitted).

91. *Id.* § 214.2(q)(3)(iii)(B).

92. *Id.*

93. *Id.* § 214.2(q)(3)(iii)(A).

94. *Id.* § 214.2(q)(3)(iii)(C).

95. *Id.* § 214.2(q)(4)(ii)(B).

96. An employer seeking to hire an “H-1B” nonimmigrant worker, for example, must submit a labor certification application with the U.S. Department of Labor stating, among other things, that it has taken “good faith steps to recruit” U.S. workers. *See* 8 U.S.C. § 1182(n)(1)(G)(i) (2006).

97. 8 C.F.R. § 214.2(q)(3)(i).

98. *Id.* § 214.2(q)(3)(iv)(C).

99. *Id.* § 214.2(q)(2)(i).

more than once so long as they reside and are physically present outside of the United States for a minimum of one year before each return to the United States.¹⁰⁰

Finally, it is important to note that there is no numerical limit or quota on the number of Q visas that can be granted yearly. This stands in contrast to the statutorily imposed limits in place for other categories of nonimmigrant employment visas.¹⁰¹

C. *Part of Your World*:¹⁰² Disney's Cultural Representative Program

The official title of Walt Disney World's Q visa-based program is the Disney Cultural Representative Program.¹⁰³ It is marketed as a means for participants to "share their culture and customs with . . . [g]uests who visit from all over the world."¹⁰⁴ Disney requires that the participants have firsthand experience of life in the country they seek to represent.¹⁰⁵ Participants must also be able to speak the language of the country represented, as well as have a sufficient command of English in order to be able "to communicate and explain their customs, traditions and culture to the public."¹⁰⁶

Since its inception in 1990, the program has been "working very well."¹⁰⁷ Dickson calls it "one of the best exchange programs in the world."¹⁰⁸

Consistent with the program's history, many members of the Disney Cultural Representative Program are stationed at their home countries' themed pavilions in the Epcot World Showcase.¹⁰⁹ Notably, the Walt

100. *Id.* § 214.2(q)(2)(ii). Indeed, some Disney cast members who participated in the one-time-only Disney International College Program, *see infra* Part IV.B, have rejoined Disney through the Cultural Representative Program. *See, e.g.*, Louisa Gibbs, *Louisa's Home Page*, THE WONDERFUL WORLD OF DISNEY, <http://www.freewebs.com/disneygibbs/> (last visited Feb. 27, 2011); *The Story of the S*, THE MANY ADVENTURES OF SHAYNA AND SHANAN, <http://shashafabulous.wordpress.com/the-story-of-the-s/> (last visited Feb. 27, 2011); *When You Wish Upon a Star Your Dreams Come True*, THE MANY ADVENTURES OF SHAYNA AND SHANAN (Jan. 5, 2010), <http://shashafabulous.wordpress.com/2010/01/05/when-you-wish-upon-a-star-your-dreams-come-true/> (telling the story of Canadian roommates in Disney's International College Program who will return to Orlando as cultural representatives).

101. For example, there are 65,000 H-1B visas available annually. 8 U.S.C. § 1184(g)(1)(B) (2006).

102. *Part of Your World* is a song from the Disney movie *The Little Mermaid*. JODI BENSON, *Part of Your World*, on THE LITTLE MERMAID (Walt Disney 1989).

103. *See Cultural Representative Program: Program Overview*, DISNEY INT'L PROGRAMS, <https://www.disneyinternationalprograms.com/crp.html> (last visited Feb. 27, 2011).

104. *Id.* Cultural representatives also visit and share their cultures with elementary school students in the Orlando area. *See* Kristine Millen, *Ambassadors Bring the World to Schoolchildren*, ST. PETERSBURG TIMES (St. Petersburg, Fla.), Oct. 15, 1998, North Pinellas Times Section, at 10.

105. Disney MSJ, *supra* note 27, at 1 n.1.

106. *Id.*

107. Carey & Johnson, *supra* note 56.

108. Verrier, *supra* note 26.

109. *Cultural Representative Program: Program Overview*, *supra* note 103; *see also* DK,



Disney World Company operates only five of the eleven Epcot pavilions—Norway, United Kingdom, Canada, Germany, and the United States.¹¹⁰ However, the third-party operators who run the other pavilions—Mexico, China, Japan, France, Italy, and Morocco—are contractually required to follow Disney’s staffing “authenticity” requirements.¹¹¹

The work of the Epcot cultural representatives is varied.¹¹² For example, consider a cultural representative who is stationed in the outdoor vending area of the Chinese pavilion that abuts the central lagoon. He sells authentic Chinese toys, including intricate marionettes and diabolos, which are traditional Chinese performance and folk toys.¹¹³ But his role is not limited to mere sales. He makes the marionettes come alive and has them dance for tourists passing by. When a young boy tries to work one of the diabolos, the cultural representative gamely steps behind him, takes his hands, and guides him along. In this way, the cultural representative’s position in merchandizing is one of selling goods while exhibiting, explaining, and sharing traditional culture and customs. His employment is, in short, living up to the statutory and regulatory language surrounding Q visas.

Another example is the cultural representative who greets guests looking for a thrill on the Maelstrom ride in the Norway pavilion at Epcot Center. The cultural representative wears traditional Norwegian dress, and she asks guests if they have ever been to Norway. Then, whether or not the guests have visited Norway, she regales them with stories about her hometown of Trondheim while they wait to board a simulated Viking boat that will take them past several animatronic trolls, a not-too-threatening polar bear, and a large-scale model of an offshore drilling rig. Her job

supra note 36, at 50; HESS ET AL., *supra* note 14, at 97.

110. Disney MSJ, *supra* note 27, at 3 n.4.

111. *Id.*

112. One role that cultural representatives do not hold is in the area of entertainment. Entertainment at the pavilions is structured to be authentic to the countries represented, but it is not staffed by cultural representatives. *Id.* at 5 n.6.

113. *Diabolos*, SERIOUS JUGGLING, <http://www.seriousjuggling.com/diabolos-chinese-yo-yo.htm> (last updated Jan. 4, 2011).

clearly involves sharing culture and customs.¹¹⁴

The Cultural Representative Program, however, is not limited to the Epcot Theme Park. Another focus of the program is Disney's Animal Kingdom and the adjacent Animal Kingdom Lodge.¹¹⁵

Animal Kingdom is the newest theme park at Walt Disney World. Established more than a decade ago, its vast acreage makes it the largest of any Disney theme park on the globe.¹¹⁶ The park includes an area called Africa and one called Asia, where guests can dine on authentic cuisine, purchase country-inspired souvenirs, view dance and drumming demonstrations, and see indigenous animals living in "careful re-creations of natural landscapes in exotic lands ranging from Thailand and India to southern Africa."¹¹⁷ Disney has worked to hire Africans and Asians as cultural representatives in order to add authenticity to these areas of the park.¹¹⁸

Just as they do at Epcot, cultural representatives inside Disney's Animal Kingdom perform a variety of roles. Consider just one of the cultural representatives who is stationed at the open-air market in the Africa section of the park.¹¹⁹ She stands behind a table that is covered with traditional African instruments. A young guest approaches and picks up a handmade shekere. The representative explains that the shekere is made of calabash gourds and shells, popular throughout Africa, and can produce either a subdued or very loud shaker sound. She and the guest then shake the instrument to explore the many sounds it can make.

Near the Animal Kingdom is the Animal Kingdom Lodge, which opened in 2001.¹²⁰ The six-story, 1,293-room safari lodge is designed in the style of a South African krall or village.¹²¹ Balconies around the building overlook savannas housing hundreds of animals.

Roles for cultural representatives stationed at the Animal Kingdom Lodge vary. Some are "greeters" in the hotel lobby.¹²² Some work at Jiko, one of the hotel's three restaurants, serving up authentic African cuisine.¹²³

114. See Charles Hillinger, *Epcot's International Pavilions Operate as True Global Village*, L.A. TIMES, Mar. 25, 1990, at E4 (telling the story of an exchange in the Morocco pavilion where a cast member engaged guests with an explanation of where Morocco is and how it enjoys the longest unbroken treaty of any country in the world with the United States).

115. *Cultural Representative Program: Program Overview*, supra note 103; see also Verrier, supra note 26.

116. HESS ET AL., supra note 14, at 142.

117. *Id.*

118. Verrier, supra note 26.

119. The following information is the result of an interview with a cast member. Interview with "Amari," Cast Member, Walt Disney World, in Orlando, Fla. (May 25, 2009).

120. Richard Verrier, *Disney Goes Wild With Hotel*, ORLANDO SENTINEL, Mar. 5, 2001, at CFB20.

121. *Id.*

122. See *Cultural Representative Program: Sub-Saharan Africa Role Descriptions*, DISNEY INT'L PROGRAMS, https://www.disneyinternationalprograms.com/crp/roles_africa.html (last visited Feb. 27, 2011).

123. See *id.*; Jane Wooldridge, *Disney Lodge Recreates Africa, Wildlife and All*, MIAMI

Others serve as guides for one of the lodge's savannas, answering guests' questions about both the animals found there and their home countries.¹²⁴

These examples demonstrate the clear success of the Q visa for Disney. It has paved the way for Disney to transport guests from Florida to countries around the world by introducing them to "the cultures, customs, crafts, and foods of other lands."¹²⁵

Beyond those roles associated with this magical guest transportation, cultural representatives also have roles in guest relations. That is, they are stationed in guest relations areas at each of the theme parks and in Downtown Disney.¹²⁶ There, they communicate with the resort's diverse visitors in their native languages,¹²⁷ "answering Guest questions, providing information and directions, handling Guest situations, cash handling, problem solving and proactively seeking out Guest contact."¹²⁸

D. *If I Didn't Have You*:¹²⁹ How Cultural Representatives Benefit Disney

Cultural representatives are uniquely affordable. While they are covered by the resort's collective bargaining agreement,¹³⁰ their salaries remain low when compared to union workers because of their short length of stay. Their pay starts at slightly above the minimum wage.¹³¹

There are also tax benefits in hiring international cultural

HERALD, June 3, 2001, at 1J ("Lesh, a young man from Botswana who works at the Boma family restaurant, stopped at breakfast to answer questions about Africa's geography.").

124. See, e.g., *Animal Kingdom Lodge Fact Sheet*, ALL EARS.NET, http://allears.net/acc/faq_akl.htm (last visited Feb. 27, 2011) (answering the question, "What are the savannas like?"); *Cultural Representative Program: Sub-Saharan Africa Role Descriptions*, *supra* note 122.

125. BEARD, *supra* note 35, at 134–35.

126. *Cultural Representative Program: Program Overview*, *supra* note 103.

127. Verrier, *supra* note 26 (quoting the director of hiring for Walt Disney World as stating, "Many of our guests who come here don't speak English, so to have someone who can speak their language and their culture—we get guest compliments on that . . .").

128. See *Guest Relations Jobs at Disney Theme Parks & Resorts*, DISNEY, <http://casting.disney.parks.jobs/careers/guest-relations-jobs> (last visited Feb. 27, 2011).

129. *If I Didn't Have You* is a song from the Disney/Pixar film *Monsters, Inc.* BILLY CRYSTAL, *If I Didn't Have You*, on MONSTER'S INC. (Walt Disney Records 2001).

130. Interview with Julee Jerkovich, Sec'y-Treasurer, UFCW Local 1625, in Orlando, Fla. (Mar. 19, 2010) [hereinafter Jerkovich Interview]. Notably, cultural representatives are able to use the union grievance system to challenge adverse employment decisions, but they may be returned to their home country before that process is completed. See Scott Powers, *Disney Sends Ex-Worker Home*, ORLANDO SENTINEL, Sept. 5, 2008, at C1 (relating the story of Odirile Rammoni, a cultural representative from South Africa, who was dismissed following charges of improperly touching a co-worker and who was returned to Africa before his arbitration hearing); Jerkovich Interview, *supra* (discussing the need to pursue expedited grievances for Q visa beneficiaries).

131. For example, a custodial host or hostess might be paid \$7.60 per hour, see *Walt Disney World Career Opportunities*, DISNEY, <http://disney.go.com/DisneyCareers/wdwcareers/hourly/custodial.html> (last visited Feb. 27, 2011), while the Florida minimum wage is \$7.25 per hour, see *Florida's Minimum Wage*, AGENCY FOR WORKFORCE INNOVATION, <http://www.floridajobs.org/minimumwage/index.htm> (last updated Oct. 2010).

representatives.¹³² Such workers are exempt from FICA taxes,¹³³ which would otherwise cost Disney 7.65% of the workers' total earnings.¹³⁴

Taking a look at figures from 1982, the then-average Disney employee had three years of seniority.¹³⁵ This put the average employee at step four of the union wage-progression, resulting in that worker earning fifty-seven cents per hour more than a cultural exchange representative.¹³⁶ Assuming an average thirty-two hour work week¹³⁷ and an international workforce of 2,000,¹³⁸ this would yield weekly wage savings of \$36,480 and yearly wage savings of \$1,896,960. In 2011 dollars, that's a savings of \$4,344,038 per year.¹³⁹

A more updated view of wage disparities suggests a much higher number. Based on wage disparities reported by a journalist in 2005,¹⁴⁰ and using the same assumptions as above, Disney's savings from using Q visa workers would be \$343,520 per week and \$17,863,040 per year in 2011 dollars.

Disney also manages to hold onto a good chunk of the cultural representatives' salaries. Disney owns and operates the apartment complexes where it houses international workers. Cultural representatives are charged between \$82 and \$108 per week for housing, with the rent being deducted directly from their Disney paycheck.¹⁴¹ In addition, cast members spend money at the parks when they are not working.¹⁴²

132. Dickson Teaching Notes, *supra* note 49, at 3.

133. Mike Cooper & Stan Torgersen, *New Regs on Certain Filing Requirements of Foreign Individuals*, 29 THE TAX ADVISER 150, 150 (1998).

134. See, e.g., INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUBL'N 15 (CIRCULAR E), EMPLOYER'S TAX GUIDE 1 (2010), available at <http://www.irs.ustreas.gov/pub/irs-pdf/p15.pdf> (adding the Medicare tax rate with the employer tax rate for social security).

135. Dickson Teaching Notes, *supra* note 49, at 3.

136. *Id.*

137. *Id.*

138. Dickson Interview, *supra* note 17.

139. Adjustments to 2011 dollars were calculated with reference to the U.S. Consumer Price Index. See *What Is a Dollar Worth?*, FED. RESERVE BANK OF MINNEAPOLIS, http://www.minneapolisfed.org/community_education/teacher/calc/ (last visited Feb. 27, 2011) (click "CPI calculator" link).

140. One journalist clocked the hourly wage disparity between a college worker, who would be in the same seniority position as a cultural representative, and a "veteran" to be \$4.75 an hour, which would result in a weekly wage savings of \$304,000 and yearly wage savings of \$15,808,000. See Mike Schneider, *Disney World Internships Draw College Students and Criticism*, MIAMI HERALD, July 25, 2005, at G4.

141. *Cultural Representative Program: Living*, DISNEY INT'L PROGRAMS, https://www.disneyinternationalprograms.com/crp/living_intro.html (last visited Feb. 27, 2011); see also Verrier, *supra* note 26.

142. See, e.g., Jim Hill, *Cast Member Corner: Further Thoughts on WDW's College Program*, JIM HILL MEDIA (Mar. 31, 2004, 4:00 PM), http://jimhillmedia.com/blogs/cast_member_corner/archive/2004/04/01/1184.aspx (discussing the Disney College Program). The resort has an entire store devoted to selling Disney memorabilia to cast members. Anne Smith, Remarks at the University of North Dakota recruiting session for the Disney College Program (Mar. 31, 2010) (notes on file with author).

Disney also obtains cost savings through the uniquely dependable nature of international labor. While general hires may simply walk away from their positions at Disney,¹⁴³ international workers tend to stay.¹⁴⁴ For one, they approach the position understanding that it is a short-term experience.¹⁴⁵ The fact that the cultural representatives also pay for their own visa costs, as well as any in-country travel to obtain that visa,¹⁴⁶ assures Disney that the workers are serious about the program.¹⁴⁷ In addition, their ability to remain in the United States is tied to the terms of their visa, which requires them to participate in the Disney Cultural Representative Program.¹⁴⁸ To put it bluntly, if they leave the job, they must leave the country.

The authorized length of stay for cultural representatives is also financially important. Cultural representatives can work up to fifteen months in the United States,¹⁴⁹ which is significantly longer than some of the four-month¹⁵⁰ or even twelve-month¹⁵¹ international college programs at Disney. In addition, Q visa recipients can return to the United States with Q visas multiple times, so long as they live outside the United States for at least one year between trips.¹⁵² The longer stay and permission to return limits Disney's turnover and training costs.

This is not to suggest that there are no costs to international staffing. Disney incurs advertising costs, travel and business expenses, and recruiters' expenses, to name a few.¹⁵³ But those costs do not exceed or even match the savings resulting from lowered wages and tax exclusion.¹⁵⁴ And those costs may now be significantly reduced since Disney does all

143. See, e.g., DisneyCP2000, *Disappointed by Disney*, WDW MAGIC.COM (Nov. 27, 2002, 2:40 PM), <http://forums.wdwmagic.com/showthread.php?t=17028> (“[O]ne [of] my roommate’s [sic] left the program after 2 months . . .”). According to Julee Jerkovich at United Food & Commercial Workers Union, Local 1625, attrition, while normally a concern for Disney, has dropped off significantly with the present economic downturn. Jerkovich Interview, *supra* note 130.

144. Dickson Teaching Notes, *supra* note 47, at 3.

145. *Id.*

146. See *Cultural Representative Program: FAQs*, DISNEY, https://www.disneyinternational.com/crp/faq_intro.html (last visited Feb. 27, 2011) (“This visa authorizes employment for your specific company ONLY.”).

147. See Kelly Barbieri, *Textbook Lesson on Exchange Students: Bringing Foreigners to Work at U.S. Attractions Is Not as Easy as It Used to Be*, AMUSEMENT BUS., Apr. 2005, at 27, 32.

148. See 8 C.F.R. § 274a.12(b)(15) (2010). Cultural representatives have another reason to stick out their contracts: If they fulfill their contract with Disney, the company will pay for half of their round-trip travel to their home country. Interview with “Jamie,” Cast Member, Walt Disney World, in Orlando, Fla. (May 27, 2009) [hereinafter Jamie Interview]; see also Hillinger, *supra* note 114 (noting that international students at Epcot, the precursors to cultural representatives, who left the program early forfeited a paid flight back).

149. See 8 C.F.R. § 214.2(q)(2)(i) (2010).

150. See *infra* note 295 and accompanying text.

151. See *infra* note 318 and accompanying text.

152. See 8 C.F.R. § 214.2(q)(2)(ii); see also Jamie Interview, *supra* note 148 (stating that he was on his second Q visa stay in the United States with Disney).

153. See Dickson Teaching Notes, *supra* note 49, at 3.

154. *Id.*

international recruiting in-house.¹⁵⁵ They have also now moved, in part, towards an Internet-based application¹⁵⁶ and interview process.¹⁵⁷

Disney may benefit financially from its cultural representatives, but one former cast member has challenged Disney's insistence on staffing certain areas of the resort exclusively with cultural representatives, claiming that doing so amounts to employment discrimination.¹⁵⁸ In a lawsuit filed in 2005, Anesh Gupta, an Asian-American, argued that wait-staff positions at the Akershus Royal Banquet Hall in Epcot's Norway pavilion should not be limited to cultural representatives.¹⁵⁹

Gupta's lawsuit centered on the Akershus Royal Banquet Hall, which is by far the most popular restaurant in Epcot. In fact, it books reservations up to 180 days in advance.¹⁶⁰ The restaurant's popularity derives neither from the staff's traditional Norwegian garb nor the Norwegian cuisine on the menu. Rather, Akershus is the only restaurant in Epcot to offer a service that legions of little girls clamor for—the opportunity to dine with Disney princesses such as Sleeping Beauty,¹⁶¹ Belle, and Snow White.¹⁶²

Compared to other cast members, the cultural representatives who serve as wait-staff for Akershus earn an extraordinary amount of money.¹⁶³ In a single day, thanks to the tips, an Akershus server takes home the equivalent of two weeks' wages for an entry-level cast member in the Norwegian pavilion's merchandise store.¹⁶⁴

Initially, Disney did not insist that all of the Akershus' wait-staff complement the Norwegian cultural theme. The company allowed “non-authentic” cast members to work the breakfast shift, before the World Showcase opened, when an American breakfast was served.¹⁶⁵ In April of 2005, that changed.¹⁶⁶ Disney eliminated the American-style breakfast and

155. See Barbieri, *supra* note 147 (noting comments of Kim Warsicki, manager of international recruitment at Walt Disney Entertainment).

156. See *Get Started/Apply Now*, *supra* note 28.

157. Disney employs Web-based interviews in connection with the parallel Disney College Program. See *How to Apply*, DISNEY COLLEGE PROGRAM, https://www.wdwcollegeprogram.com/sap/its/mimes/zh_wdwcw/apply/apply.html (last visited Feb. 27, 2011) (describing the Web-based interview process for the Disney College Program).

158. See *Gupta v. Walt Disney World Co.*, 256 F. App'x 279, 280 (11th Cir. 2007).

159. *Id.*

160. BIRNBAUM GUIDES, WALT DISNEY WORLD: EXPERT ADVICE FROM THE INSIDE SOURCE 259 (Stephen Birnbaum et al. eds., Disney Book Group 2009) [hereinafter BIRNBAUM 2009]; HESS ET AL., *supra* note 14, at 106 (noting that reservations are booked ninety days in advance for those not staying at hotels on the resort property); *Princess Storybook Dining at Akershus Royal Banquet Hall*, DISNEY, <http://disneyworld.disney.go.com/dining/akershus/> (last visited Feb. 27, 2011).

161. Sleeping Beauty is known formally as “Aurora,” a moniker less familiar to the general public than to the throngs of costume-clad look-alike children who descend upon the Walt Disney properties every day. See *Sleeping Beauty: Princess Aurora*, DISNEY, <http://disney.go.com/characters/?channel=154189#/characters/classics/sleepingbeauty/> (last visited Feb. 27, 2011).

162. See HESS ET AL., *supra* note 14, at 106.

163. Jamie Interview, *supra* note 148.

164. *Id.*

165. *Gupta v. Walt Disney World Co.*, 256 F. App'x 279, 281 (11th Cir. 2007).

166. *Id.*

shifted to an all-day Norwegian dining experience, and thus one staffed by international workers.¹⁶⁷ Disney justified the staffing change with a clever plotline: The wife of a Viking king now “invites storybook heroines to a feast at the royal castle in Norway.”¹⁶⁸ From that moment on, Disney has insisted that all wait-staff be “culturally authentic to Norway.”¹⁶⁹

Gupta argued that the shift in staffing policy amounted to employment discrimination.¹⁷⁰ The courts disagreed. Disney won summary judgment from the United States District Court in Orlando,¹⁷¹ and that decision was upheld by the Eleventh Circuit.¹⁷²

The Eleventh Circuit’s decision was based in large part on Disney’s description of cultural authenticity. The company insisted that authenticity was not dependent upon Norwegian heritage,¹⁷³ but rather the individual’s ability to authentically share the Norwegian culture.¹⁷⁴ Gupta was unable to authentically share the Norwegian culture with guests because he had only visited the country for one or two days and had no firsthand knowledge of Norwegian culture.¹⁷⁵ The court agreed with Disney that Gupta was therefore unqualified to be a server at Akershus and so had neither direct nor circumstantial evidence of employment discrimination.¹⁷⁶

The Gupta lawsuit is significant for many reasons. For one, it highlights Disney’s artful lawyering.¹⁷⁷ Had Disney insisted that Akershus servers be of Norwegian ancestry,¹⁷⁸ the company would have lost the suit.¹⁷⁹ Instead, Disney established that cultural authenticity—however gained—was an important job qualification.¹⁸⁰

The case is also significant because Gupta pursued his suit without legal representation¹⁸¹ and without union support. If the earnings of Akershus wait-staff were a concern to American workers, one imagines

167. *Id.*

168. Disney MSJ, *supra* note 27, at 5.

169. *Gupta*, 256 F. App’x at 281.

170. *Id.* at 281–82.

171. *See Gupta v. Walt Disney World Co.*, No. 6:05-cv-1432-Orl-22UAM, 2007 WL 2002454, at *1 (M.D. Fla. July 5, 2007) (reviewing motion for review of costs following entry of summary judgment).

172. *Gupta*, 256 F. App’x at 280.

173. That is to say, Disney’s policy did not turn on national origin, race, or color. *Id.* at 282.

174. *Id.* At the time, Disney employed a cultural representative in the Norway pavilion who was of Asian ancestry but who grew up in Norway, spoke Norwegian, and had “personal knowledge of the traditions and culture of Norway.” Disney MSJ, *supra* note 27, at 3.

175. *Gupta*, 256 F. App’x at 282.

176. *Id.*

177. *See* David Tobenkin, *Not Norwegian Enough: Is It Ever OK to Discriminate?*, HR MAG., Aug. 2008, at 91, http://findarticles.com/p/articles/mi_m3495/is_8_53/ai_n29460346/?tag=content;coll.

178. Disney admitted that “cultural authenticity was described in shorthand” by “individual employees” as “‘being from’ Norway or being ‘first or second generation.’” Disney MSJ, *supra* note 27, at 9 n.10, 18 n.19.

179. Tobenkin, *supra* note 177.

180. *Id.*

181. *Gupta*, 256 F. App’x at 280.

that the unions who represent Disney workers would have jumped at the chance to litigate the practice of staffing the restaurant with cultural representatives. They did not. One explanation for this is that cultural representatives are not staffed at other character dining experiences around the resort—such as Play ‘n Dine¹⁸² in Disney’s Hollywood Studios or Cinderella’s Royal Table, Crystal Palace, and Liberty Tree Tavern in the Magic Kingdom—giving American workers the opportunity to earn the coveted princess-induced tips at those establishments. Another explanation is that wait-staff at character restaurants, despite their tips, are not the highest paid cast members at the resort. That honor goes to banquet workers¹⁸³—and those roles are reserved exclusively for American workers.¹⁸⁴

E. *Mine, Mine, Mine*:¹⁸⁵ *The Q Visa Success*

It is hard to view Dickson’s lobbying efforts as anything other than a full-scale success for Disney. Twenty years after its creation, Disney remains the dominant beneficiary of the Q visa. Participants in Disney’s 2007 Cultural Representative Program held about 54% of the 2,412 Q visas that the United States granted during that year.¹⁸⁶

After all, the “controlling considerations” for such programs are “the public accessibility and the cultural exchange value of the program.”¹⁸⁷ Disney’s cultural representatives are “available” to the public—at least the public who can afford Disney’s rather steep admission prices. And they are viewed as employees of “a national exhibit at an international cultural forum”—one that is visited by park guests specifically looking to experience the history, culture, and traditions of the workers’ home countries.¹⁸⁸ As such, the government believes it is irrelevant that their

182. The Play ‘n Dine restaurant, rather than offering costumed princesses, draws its characters from the preschool-targeted television shows under the Playhouse Disney brand. The characters include June and Leo from Disney’s *Little Einsteins* and *Handy Mandy*. See BIRNBAUM 2009, *supra* note 160, at 236, 252; *Hollywood & Vine: Hollywood Studios Dining & Restaurants*, DISNEY, <http://disneyworld.disney.go.com/dining/hollywood-and-vine/> (last visited Feb. 27, 2011).

183. Jerkovich Interview, *supra* note 130.

184. *Id.*

185. *Mine, Mine, Mine* is a song from the Disney movie *Pocahontas*. MEL GIBSON, *Mine, Mine, Mine*, on *POCAHONTAS* (Walt Disney Records 1995).

186. Compare Dewayne Bevil, *25 Years of Epcot Fun*, ORLANDO SENTINEL, Sept. 30, 2007, at F10 (estimating Epcot’s Q visa recipients to be 1,300 strong), with OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., 2008 YEARBOOK OF IMMIGRATION STATISTICS 63–66 tbl.25 (2009), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf (reporting the issuance of 2,412 Q visas in 2007). The lowest number of Q visas granted since 1999 was 1,755 (in 2002) and the highest was 3,231 (in 2008). *Id.* The average admission rate between 1999 and 2008 was 2,359. *Id.* This stands in contrast to the nearly 900,000 total temporary workers or 350,000 J-1 visa recipients admitted annually from 1999 to 2008. *Id.*

187. Letter from Evelyn M. Upchurch, Dir. of the Tex. Serv. Ctr. of the U.S. Citizenship and Immigration Servs., to Joseph H. Rosen 3 (Nov. 29, 2005) (on file with author) [hereinafter Rosen Letter].

188. *Id.*

“associated employment may be in a relatively minor retail function such as food service or the vending of souvenirs.”¹⁸⁹

It is remarkable to contrast Disney’s Q visa success with the following story of Q visa failure. A temporary staffing company specializing in placing hotel employees tried to justify its ongoing hiring of Q visa-based workers for placement at hotels throughout the United States by noting that the workers were told to: (1) wear clothing reflective of their nationality and country of origin; (2) engage in discussions with guests regarding their culture; and (3) host cultural events at their hotel placements.¹⁹⁰ In terminating the company’s Q-based program, the government noted a lack of evidence “that would show the public is coming to the hotel for cultural enlightenment” and that “any exchange of information is incidental to the work being done by the beneficiaries for the hotel.”¹⁹¹ Central to this holding was the government’s position that the purpose of the erstwhile international cultural program was “internal business interests” of the company and not “a more general sharing of the history, culture, and traditions of the country of the alien’s nationality.”¹⁹² The government’s position is particularly ironic given that the “internal business interests” of Disney in building a profitable business around the sharing of international history, culture, and traditions prompted the development of the Q visa in the first place.

Perhaps more intriguing is how Disney has managed to achieve a measure of general union acceptance for its Cultural Representative Program. While union representatives often field calls from members who complain about the domestic and international students who are encroaching upon their roles, there is a feeling that American workers simply could not fill the roles held by “authentic” cast members.¹⁹³ This is a startling achievement given union concerns about the program when Epcot first opened in 1982.¹⁹⁴

The fact is that the Disney Cultural Representative Program operates well. It manages to hold fast within the statutory and regulatory guidelines that bind it, which, as discussed below, is a feat Disney hasn’t been able to manage with its international college programs. Of course, why shouldn’t the program be a success? It was literally created by and for Disney.

And therein lies the rub. What does the Q visa story say about immigration reform? President Barack Obama has called for immigration reform that “reflects our values as a nation of laws” and “demands accountability from everybody—from government, from businesses and from individuals.”¹⁹⁵ In this story, Disney was facing a business problem

189. *Id.*

190. *Id.* at 1–2.

191. *Id.* at 3.

192. *Id.*

193. Jerkovich Interview, *supra* note 130; *see also* Schneider, *supra* note 140 (“Regular workers sometimes grumble about the college interns when business is slow and their work hours are cut back, such as after the Sept. 11 terrorist attacks.”).

194. Dickson Case Study, *supra* note 32, at 3–4.

195. Obama, *supra* note 12.

(cultural authenticity), tried one solution (the J visa), was facing potential backlash (GAO investigation), and responded by *creating its own law*. If the country truly seeks value-based reform focused on accountability, it must open its eyes to the ways in which reform can be so easily captured.

IV. WHISTLE WHILE YOU WORK:¹⁹⁶ THE J VISA AND DISNEY'S INTERNATIONAL COLLEGE PROGRAM

Currently, about half of Disney's international cast members come to the resort on J student visas as participants in the Disney International College Program.¹⁹⁷ As discussed in the prior section, Walt Disney World has been bringing international cast members to the resort on J visas since the Epcot theme park opened in 1982.

This section takes a close look at the history of J visas, focusing on how the visa came to be and what Congress hoped to achieve with it. I then set out the statutory requirements for the visa. Next, I discuss the three different "experiences" that comprise the Disney International College Program. The central issue uncovered in examining the first of those experiences, Disney's Academic Exchange Experience, is how Disney has taken advantage of the ambiguous concept of J visa-based "academic training" to staff unskilled positions within its parks. An investigation of Disney's other two experiences, the Summer Work Experience and the Australia/New Zealand Work Experience, shows how Disney has taken advantage of the fact that those who enacted J visa regulations impermissibly reached beyond the statute intended to confine their actions.

A. *It's a Small World*:¹⁹⁸ The History of the J Visa

The J visa has been in existence since 1961. It is a product of the Mutual Educational and Cultural Exchange Act of 1961, also called the Fulbright-Hays Act after Senator J. William Fulbright, who was then chairman of the Senate Foreign Relations Committee.¹⁹⁹ Its history, however, dates back to 1939. In August of that year, Congress enacted a law²⁰⁰ relating to educational cooperation with Latin America that provided, among other things, for international student exchanges

196. *Whistle While You Work* is a song from the Disney movie *Snow White and the Seven Dwarfs*. ADRIANA CASELOTTI, *Whistle While You Work*, on SNOW WHITE AND THE SEVEN DWARFS (Walt Disney 2008).

197. Arledge Interview, *supra* note 26; compare Bevil, *supra* note 186 (estimating Epcot's Q visa recipients to be 1,300), with Dickson Interview, *supra* note 17 (estimating the resort's total international workforce to be less than 2,000).

198. *It's a Small World* is the name of a ride found at Walt Disney World's Magic Kingdom and Disneyland as well as the rides' eponymous theme song. See, e.g., "*It's a Small World*": Walt Disney World Resort, DISNEY, <http://disneyworld.disney.go.com/parks/magic-kingdom/attractions/its-a-small-world/> (last visited Mar. 22, 2011).

199. Pub. L. No. 87-256, 75 Stat. 527 (1961).

200. Pub. L. No. 76-355, 53 Stat. 1290 (1939) ("To authorize the President to render closer and more effective the relationship between the American republics.").

monitored by the Department of State.²⁰¹ The “[p]rimary emphasis” of the law was on “the increase of mutual understanding through personal relationships between leaders of thought and opinion in all fields.”²⁰²

The 1948 United States Information and Educational Exchange Act,²⁰³ better known as the Smith–Mundt Act,²⁰⁴ expanded the 1939 Act beyond the Western Hemisphere. Section 201 of the Smith–Mundt Act authorized the Secretary of State to “provide for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill.”²⁰⁵ Visitors under this program were considered “nonimmigrant visitors for business,”²⁰⁶ and later just unspecified “nonimmigrants,”²⁰⁷ present in the United States for a finite period before returning to their country of origin.

The legislative reports that discussed the purpose and need for the Smith–Mundt Act echoed the 1939 call for “mutual understanding between the people of the United States and of other countries.”²⁰⁸ Congress argued that such “mutual understanding” was necessary to “correct misunderstandings about the United States abroad.”²⁰⁹

[T]he importance of maintaining such a program cannot be gainsaid. The American people, our ideals, and our form of government are being misrepresented and distorted abroad by the propaganda of other nations. The prestige of the United States and of democracy itself are suffering as a result of this unequal battle of ideas. We must be able to tell abroad the truth about the United States. We cannot afford to let others tell that story for us.²¹⁰

One thing that was not spelled out in the Smith–Mundt Act was how to deal with exchange visitors who wanted to stay in the United States after

201. See 10 DEP’T ST. BULL. 213, 215–16 (Mar. 4, 1944).

202. *Id.* at 216.

203. Pub. L. No. 80-402, 62 Stat. 6 (1948).

204. See Naomi Schorr & Stephen Yale-Loehr, *The Odyssey of the J-2: Forty-Three Years of Trying Not to Go Home Again*, 18 GEO. IMMIG. L.J. 221, 224 (2004).

205. Pub. L. No. 80-402, 62 Stat. 6 (1948).

206. S. REP. NO. 80-811, at 8 (1948).

207. After the passage of the Immigration and Nationality Act of 1952, § 201 of the Smith–Mundt Act was revised to indicate that exchange students would be classified as nonimmigrants under Immigration and Nationality Act’s § 101(a)(15). See Pub. L. No. 82-414, § 402, 66 Stat. 163, 276–77 (1952); Schorr & Yale-Loehr, *supra* note 204, at 226–27. The lack of a specific nonimmigrant visa for exchange students led to “considerable difficulties and confusion” with such aliens “variously, and rather haphazardly, issued different types of statutorily established nonimmigrant visas.” H.R. REP. NO. 87-1094, at 16 (1961).

208. S. REP. NO. 80-573, at 1 (1947); see also H.R. REP. NO. 80-416, at 3 (1947).

209. S. REP. NO. 80-573, at 1; see also H.R. REP. NO. 80-416, at 4 (“A secondary, although highly important, objective of the bill is to correct misunderstandings and misinformation about the United States which exist in other parts of the world.”).

210. S. REP. NO. 80-811, at 13.

the conclusion of their exchange programs. President Dwight Eisenhower strongly urged the passage of a new law to require “that exchange personnel return home and remain there for a minimum period before being eligible to reenter the United States for permanent residence.”²¹¹ He argued that this would be the only effective means for achieving the program’s basic objectives: (1) promoting international understanding and (2) allowing the countries of origin to benefit from their citizens’ United States training.²¹²

Congress obliged. In 1956, the Smith–Mundt Act was amended to require exchange participants to reside and be physically present overseas for at least two years following their departure from the United States.²¹³

The Fulbright–Hays Act of 1961 followed.²¹⁴ Its purpose was to “consolidate, expand, and simplify both the scope and the administration of [U.S.] international educational and cultural exchange program[s],”²¹⁵ which included, among others, the Smith–Mundt Act.²¹⁶

The Act authorized “educational exchanges” open to “students, trainees, teachers, instructors, and professors”²¹⁷ as well as “other exchanges . . . promoting studies, research, instruction, and other educational activities of citizens and nationals of foreign countries in American schools, colleges, and universities located in the United States.”²¹⁸ It also authorized separate “cultural exchanges” for limited categories of specialized activities such as creative performing artists and athletes.²¹⁹

The Act fixed the problem of how to define these exchange visitors for purposes of immigration law by creating a new visa category—the J visa—solely to serve the purposes of the Fulbright–Hays Act.²²⁰ This new J visa applied, and continues to apply, to:

an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee . . . who is coming temporarily to the United

211. 101 CONG. REC. 7606 (1955).

212. *Id.* at 7605; *see also* S. REP. NO. 84-1608, at 4 (1956) (“It is in the interest of the United States that these people return home and contribute toward developing friendly relations between their country and ours.”).

213. Pub. L. No. 84-555, 70 Stat. 241 (1956); *see also* Schorr & Yale-Loehr, *supra* note 204, at 228.

214. Mutual Educational and Cultural Exchange Act of 1961, Pub. L. No. 87-256, 75 Stat. 527 (codified as amended at 22 U.S.C. §§ 2451–2464 (2006)).

215. 107 CONG. REC. 18,268, 18,273 (1961) (statement of Rep. Lindsay).

216. *Id.* at 18,270 (statement of Rep. Hays) (noting the then-proposed Act would codify programs found in the Fulbright amendment to the Surplus Property Act of 1944, the Smith–Mundt Act, the International Cultural Exchange and Fair Trade Participation Act of 1946, the Finnish Debt Payments Act of 1949, and parts of Public Law 480).

217. 22 U.S.C. § 2452(a)(1)(ii) (2006).

218. *Id.* § 2452(b)(10).

219. *Id.* § 2452(a)(2)(ii).

220. H.R. REP. NO. 87-1094, at 16 (1961); *see also* H.R. REP. NO. 87-1197, at 17 (1961) (Conf. Rep.).

States as a participant in a program designated by the Director of the United States Information Agency,^[221] for the purpose of . . . studying, observing, . . . consulting,²²² demonstrating special skills, or receiving training

Notably, the Act also codified the requirement that J visa recipients typically must reside overseas for two years following the conclusion of their J visa program before returning to the United States.²²³

Congress' statement of purpose for the new law largely echoed language justifying the past twenty-two years of legislation:

The purpose of this chapter is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.²²⁴

The House Report regarding the Fulbright–Hays Act was more pointedly directed at the Cold War fears prevalent at the time of the Act's passage:²²⁵

Present-day governments give a high priority to educational and cultural exchanges. While political and economic affairs are the province of a relatively few individuals, educational and cultural programs are by their very nature a people-to-people activity. A lecturer catches young minds. A student gains experiences that shape his mature years. Cultural exchanges as in music or art can reach thousands at a time. In the current struggle for the minds of men, no other instrument

221. The United States Information Agency no longer exists. Its duties have been assumed by the State Department. And the State Department has authorized Disney's J visa trainee programs. *See Designated Sponsors List*, U.S. DEP'T OF STATE, <http://eca.state.gov/jexchanges/index.cfm?sc=Disney&fuseaction=record.list&mode=search&state=> (last visited Feb. 27, 2011).

222. 8 U.S.C. § 1101(a)(15)(J) (2006).

223. 8 U.S.C. § 1182(e) (2006); 87 H.R. REP. NO. 1197, at 17 (Conf. Rep.).

224. 22 U.S.C. § 2451 (2006); *see also* 22 C.F.R. § 62.1(a) (2011) ("The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges.").

225. *See Schorr & Yale-Loehr, supra* note 204, at 232–33.

of foreign policy has such great potential.²²⁶

Congress saw in the Act the potential for drawing members of the international community into a pro-American, and thus anti-communist, stance by means of education and cultural exchange.²²⁷

B. *We're All in This Together*:²²⁸ Disney's J Visa Programs

Every student in the Disney International College Program must obtain a J visa.²²⁹ However, the regulatory requirements for obtaining that visa differ dramatically among the three "experiences" that Disney offers to international students. In the following sections, I describe each experience as well as its regulatory underpinnings, discussing how the programs comply or attempt to comply with the underlying goals of the J visa legislation.

1. The Emperor's New School:²³⁰ The Academic Exchange Experience

Disney's Academic Exchange Experience (AEE) falls under the purview of the federal J visa regulations governing international college or university exchange students. Those regulations provide two kinds of opportunities for foreign students: an internship program or a college student exchange program. Perhaps surprisingly, Disney's AEE program is offered not as an internship program, but as a student exchange program.

Disney does not sponsor internships because of the regulatory restrictions on such programs.²³¹ Qualifying internship programs "must not be used as substitutes for ordinary employment or work purposes," cannot

226. H.R. REP. NO. 87-1094, at 1 (1961); *see also* 107 CONG. REC. 11,401 (1961) (statement of Sen. Fulbright).

227. These goals were very much in line with those of Senator Fulbright himself, who one academic has described as seeking "nothing less than the creation of a pro-American global order, one conceived in the image of our domestic values." EUGENE BROWN, J. WILLIAM FULBRIGHT: ADVICE AND DISSENT 42 (1985).

228. *We're All in This Together* is a song from the Disney Channel's runaway hit *High School Musical*. HIGH SCHOOL MUSICAL CAST, *We're All in This Together*, on HIGH SCHOOL MUSICAL (Walt Disney Records 2006).

229. It is worth noting that the United States has two additional visas available to foreign students seeking to study in the United States. There is an M visa, which applies to students pursuing a full course of study at an established vocational or other non-academic institution. 8 U.S.C. § 1101(a)(15)(M)(i) (2006). There is also an F visa for students pursuing a full course of study at an established academic institution. *Id.* § 1101(a)(15)(F)(i). These visas are less appealing to Disney than the J visa because they restrict student employment. Students participating in the M visa program are unable to accept employment apart from limited practical training after completion of their studies. 8 C.F.R. § 214.2(m)(13), (14) (2010). Those in the United States under an F visa are limited in the number of hours per week that they can work and they also face significant restrictions on off-campus employment. 8 C.F.R. § 214.2(f)(9) (2010).

230. *The Emperor's New School* is the name of an animated television series that aired on the Disney Channel.

231. Arledge Interview, *supra* note 26.

be used “to displace American workers,” require “substantial academic framework in the participant’s field,” and should not include “unskilled labor.”²³² As will be discussed in further detail below, it would be impossible for Disney to meet those requirements.

Instead, Disney carves out flexibility for itself with the student exchange provision. The regulatory language provides “foreign students the opportunity to participate in a designated exchange visitor program while studying at a degree-granting post-secondary accredited academic institution.”²³³ Disney is not an accredited academic institution, so Disney itself cannot sponsor AEE students. Instead, Disney works with several U.S. institutions of higher learning²³⁴ that serve as the sponsors of such students.

To get to Disney while threading the regulatory needle, international students obtain a nomination from their overseas educational institutions, apply to and are accepted into a U.S. college or university that works with Disney,²³⁵ and then must be accepted by Disney into the AEE.²³⁶

The international students who are chosen to participate in the AEE are considered to be full-time college students.²³⁷ As such, they are required to undertake coursework while at Disney.²³⁸ They may take Disney’s own on-site and tuition-free²³⁹ collegiate-level courses such as hospitality, management, or marketing.²⁴⁰ Or they may undertake distance learning

232. 22 C.F.R. § 62.22(b)(1)(ii) (2010).

233. *Id.* § 62.23(a).

234. Disney currently works with the following U.S. institutions: Central Michigan University, Delaware State University, Dickinson State University, East Carolina University, Emporia State University, Florida State University, Hampton University, Jackson State University, Louisiana State University, Montclair State University, Murray State University, Rollins College, San Diego State University, Tompkins Cortland Community College, Troy University, and University of California-Riverside. See *Academic Exchange Experience: Participating Schools*, DISNEY INT’L PROGRAMS, <https://www.disneyinternationalprograms.com/j1.html> (last visited Feb. 28, 2011).

235. The affiliated U.S. institutions are constantly changing. In October 2010, Disney was working with University of California-Riverside, Louisiana State University, Montclair State University, Murray State University, Delaware State University, Hampton University, Central Michigan University, Troy University, Dickinson State University, Florida State University, Rollins College, East Carolina University, San Diego State University, and Tompkins Cortland Community College. See *Academic Exchange Experience: Participating Schools*, DISNEY INT’L PROGRAMS, <https://www.disneyinternationalprograms.com/j1.html> (last visited Feb. 28, 2011). The list has now expanded to include Jackson State University and Emporia State University.

236. Arledge Interview, *supra* note 26.

237. *Id.*

238. *Academic Exchange Experience: Program Overview*, DISNEY INT’L PROGRAMS, <https://www.disneyinternationalprograms.com/aee.html> (last visited Feb. 28, 2011).

239. *Academic Exchange Experience: FAQs*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/faq_intro.html (last visited Feb. 28, 2011). Tuition is free, but students are responsible for the cost of textbooks and materials. *Id.*

240. Some of these classes include Advanced Studies in Hospitality Management, Corporate Analysis, Corporate Communication, Human Resource Management, and Organizational Leadership. See *Academic Exchange Experience: Collegiate Course Information*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/education_collegiate.html (last visited

with their overseas or U.S. institutions.²⁴¹

Unlike most international exchange students, AEE participants do not have to pursue a full course of college or university study while in the United States.²⁴² That is because of regulations that allow students who participate in “authorized academic training” to pursue something less than a full course of study.²⁴³

What “academic training” means is important, but the term is without a clear definition. As odd as it may seem, “academic training” is defined neither by regulation²⁴⁴ nor by statute.²⁴⁵ A search of Web-based immigration resources, including decisions from the Board of Immigration Appeals and other primary source documents, also does not yield a definition of the term. What that search does reveal is the use of the phrase “academic training” as a synonym for academic study or background, in contrast to practical training.²⁴⁶

The regulatory section discussing “academic training” in the context of J visas simply states that such training can last up to eighteen months.²⁴⁷ It also notes that the training can be compensated (and indeed is compensated at Disney) and can be undertaken concurrently with a course of study,²⁴⁸ so long as the student:

- “is primarily in the United States to study rather than engage in academic training”;²⁴⁹

Feb. 28, 2011); *Seminar Offerings for the Walt Disney World, Co. International Academic Program*, DISNEY ADVENTURE, <http://www.thedisneyadventure.moonfruit.com/#/ufc-modules/4526522832> (last visited Feb. 28, 2011).

241. Arledge Interview, *supra* note 26.

242. See 22 C.F.R. § 62.23(e) (2010) (“A student . . . must pursue a full course of study at a post-secondary accredited academic institution in the United States as defined in § 62.2, except under the following circumstances . . .”); *id.* § 62.2 (2010) (noting that a “[f]ull course of study” for college and university students is “defined by the accredited educational institution in which the student is registered”).

243. *Id.* § 62.23(e)(5), (f).

244. See *id.* § 62.2 (definitions).

245. The term “academic training” does not appear in the Immigration and Nationality Act.

246. See, e.g., *Matter of Treasure Craft of Calif*, 14 I. & N. Dec. 190, 191 (BIA 1972), *available at* 1972 WL 27434 (“It was added that there would be no academic training as all training is on-the-job training . . .”); *Matter of Perez*, 12 I. & N. Dec. 701, 702 (BIA 1968), *available at* 1968 WL 14089 (“Although talented writers with little or no academic training beyond high school sometimes become reporters, an increasing number of newspapers will consider only applicants with college education; graduate work is also becoming increasingly important.” (internal quotation marks and external citation omitted)). It would also be possible to understand “academic training” to mean training an individual with aspirations of becoming a professor, a point that has required clarification by at least one institution. See, e.g., *Academic Training*, BERKELEY INT’L OFFICE, UNIV. OF CALIF., BERKELEY, http://internationaloffice.berkeley.edu/students/training/j-1/academic_training (last visited Feb. 28, 2011) (“Academic Training is a type of off-campus work authorization for employment in a student’s field of study (does not need to be an ‘academic’ job).”).

247. 22 C.F.R. § 62.23(f)(4)(ii).

248. *Id.* § 62.23(f)(2).

249. *Id.* § 62.23(f)(3)(i).

- “is participating in academic training that is directly related to his or her major field of study”;²⁵⁰
- “is in good academic standing”;²⁵¹ and
- “receives written approval in advance from the responsible officer for the duration and type of academic training.”²⁵²

At Disney, AEE students undertake “academic training” by working in the Disney World theme parks some thirty to thirty-five hours a week.²⁵³

Sponsoring U.S. colleges routinely screen AEE participants for three of the four regulatory criteria for academic training: academic study, academic standing, and academic preapproval. That is, the U.S. institutions typically open their programs to students with specified majors—such as tourism, hospitality, or business—who are in good academic standing²⁵⁴ and who have been recommended by their foreign institutions.²⁵⁵ It is far more difficult to assess whether the student’s primary motive in coming to the United States is for study or for the Disney academic training experience.

Some students come for the training, certainly. But not all. One former cast member blogged:

[T]here are three kinds of people that do the WDW College Program:^[256] Disney-lovers who jump at the chance to work in the Parks and maybe start a Disney career; students who think the idea of getting college credit for a semester in the Florida sun at the “Happiest Place on Earth” sounds like a lot more fun than regular class at their school, even though they don’t feel especially drawn to Disney; students who have heard “through the grape-vine” that Vista Way is an intense place to party and “get laid” and they don’t care about Disney at all. . . . [A]bout 20 percent are Disney-lovers, 50 percent want to get college credit for fun in the sun, and 30 percent are only there to party, (these are generous percentages, since

250. *Id.* § 62.23(f)(3)(ii).

251. *Id.* § 62.23(f)(3)(iii).

252. *Id.* § 62.23(f)(3)(iv).

253. See *Academic Exchange Experience: FAQs*, *supra* note 239.

254. See, e.g., *Disney’s International College Program*, CENT. MICH. UNIV., <http://www.cel.cmich.edu/Disney/> (last visited Feb. 7, 2011) (“The Program is a best-fit for undergraduate students who are studying Tourism, Leisure, Business, Hospitality, Communications, and/or Sports and Recreation.”); *Academic Exchange Experience*, DICKINSON STATE UNIV., http://wdwcollegeprogram.ecard.com/international/survey/ae_schools/dickinson.html (last visited Feb. 28, 2011) (“Major in tourism, hospitality, business, management, communication, English, human resources or related field of study, as approved.”).

255. Arledge Interview, *supra* note 26.

256. The blogger was commenting in particular on a program for U.S. students that is the AEE’s domestic analog.

it felt like there were a lot less Disney-lovers and a lot more partiers).²⁵⁷

On the one hand, sponsoring institutions may try to combat the “false” intent problem through their application procedures (“Why do you want to come to our university and participate in the Disney International College Program?”) and academic requirements (French literature majors need not apply). Indeed, the federal regulations require, as a prerequisite for authorization to engage in academic training, a letter of recommendation from the student’s dean or advisor explaining, among other things, why the training “is an integral or critical part of the academic program of the student.”²⁵⁸

On the other hand, it is important to remember that international students are learning about the Academic Exchange Experience from Disney itself. Disney’s Web site touts the Disney International College Program as providing an “opportunity to develop real-world experience, meet Guests and Cast Members from around the world, and take part in a life-changing opportunity” unavailable anywhere else.²⁵⁹ Disney actively lures students to the program with the promise that they will “[l]earn important business philosophies and transferable skills from Disney leaders” and will “[g]ain real-world experience from a highly admired company, which can be invaluable on any CV and noticed by future employers.”²⁶⁰

For those international students with aspirations of careers in hospitality, the allure of the Disney International College Program is obvious. They will “have the opportunity to learn skills that will be valuable to them in many of their future endeavors,” and “the opportunity to make professional connections with leaders from a variety of disciplines through numerous networking events.”²⁶¹ But Disney looks beyond these students. It advertises the “transferable skills” to be gained from its program, “including Guest service, effective communication, teamwork, leadership, self-confidence, responsibility and cultural sensitivity.”²⁶²

Thus, although Disney is not the visa sponsor for AEE students, it is the architect and driver of the AEE. And what Disney is selling is the opportunity to engage in academic training—that is to say, work—*not* study. Of course, this discussion entirely bypasses the most significant issue of all: How can working at Disney World be considered “academic training” at all?

257. Hill, *supra* note 142 (discussing the parallel Disney College Program).

258. 22 C.F.R. § 62.23(f)(5)(i)(D) (2010).

259. *International College Program: Program Overview*, DISNEY INT’L PROGRAMS, <https://www.wdwclegeprogram.com/sap/its/mimes/international/icp.html> (last visited Feb. 28, 2011).

260. *Id.*

261. *Id.*

262. *Id.*

a. Bibbidi-Bobbidi-Boo:²⁶³ Disney's College Courses

At first blush, it would seem that by taking Disney's collegiate courses or courses from a U.S. host college, international students are assured of receiving "academic training." Consider just one of the courses offered by Disney: Corporate Analysis. Students in this course take an in-depth look at the Walt Disney Company, including its corporate history, structure, governance, performance, and culture, as well as its core concepts of innovation, globalization, community responsibility, and diversity.²⁶⁴

The problem with this argument is that Disney's collegiate courses count for academic credit.²⁶⁵ The coursework is considered part of the concurrent course of study that an academic training participant can undertake;²⁶⁶ it is not the academic training itself. For AEE participants, it is actually the labor that the student/cast member performs at the theme park that amounts to "academic training."

b. Zip-a-Dee-Doo-Dah:²⁶⁷ Orientation, Disney-Style

How international students are trained by Disney before they take on their theme park roles is illuminating. All new Walt Disney World cast members, including international students, are required to begin their time at the resort by attending a day-and-a-half training session known as Traditions.²⁶⁸ Through Traditions, new cast members learn about the Walt Disney World Company's history, underlying philosophy, quality standards, and achievements.²⁶⁹ They are "instructed in the importance of creating a sense of happiness for guests and the distinctive Disney language and the rationale for it."²⁷⁰ They also learn about their roles at Disney, which include how to be part of the resort show²⁷¹ with a "ready smile" and the ability to deal pleasantly with large numbers of people.²⁷² They must remember that "regardless of the role in which [the student] is cast, [his or her] position will be 'magic maker' for [the Disney] guests."²⁷³

263. *Bibbidi-Bobbidi-Boo* is a song from the Disney movie *Cinderella*. VERA FELTON, *Bibbidi-Bobbidi-Boo*, on CINDERELLA (Walt Disney Records 1950).

264. *Disney Corporate Analysis Course Syllabus*, DISNEY INT'L PROGRAMS, https://www.disneyinternationalprograms.com/_assets/pdf/corp_analysis.pdf (last updated Aug. 2010).

265. *American Council on Education: Course Summaries and Credit Recommendations*, DISNEY INT'L PROGRAMS, https://www.disneyinternationalprograms.com/_assets/pdf/ACEDoc.pdf (last visited Mar. 20, 2011).

266. 22 C.F.R. § 62.23(f)(2) (2010).

267. *Zip-a-Dee-Doo-Dah* is a song from the Disney movie *Song of the South*. JAMES BASKETT, *Zip-a-Dee-Doo-Dah*, on SONG OF THE SOUTH (Disneyland 1956).

268. Jerkovich Interview, *supra* note 130.

269. See BRYMAN, *supra* note 15, at 108 box 5.1; see also *Academic Exchange Experience: FAQs*, *supra* note 239 ("Participants will spend their first official day of work in *Disney Traditions* class.")

270. See BRYMAN, *supra* note 15, at 108 box 5.1.

271. *Id.*

272. *Id.* at 109.

273. *E-Presentation: Disney College Program*, DISNEY COLLEGE PROGRAM, <http://wdwcollege>

From Disney's perspective, its cast members are trained in a fundamentally different way from employees anywhere else in the world. Even accepting this as true, the length of the Traditions program highlights an issue that is not addressed by the federal regulations: How time-consuming or in-depth must the "training" portion of "academic training" be? An international student at Disney for one year will work, conservatively, 1,500 to 2,000 hours.²⁷⁴ It seems contrary to legislative intent to justify a visa based upon a single twelve-hour training session, amounting to less than .008% of the students' time in the program.²⁷⁵

c. With a Smile and a Song:²⁷⁶ On-the-Job Experience at Walt Disney World

In the end, "academic training" at Disney really comes down to the roles that students hold in the parks. The strongest argument Disney can make that it is providing academic training is that each role held by an international student offers the chance to practice the Disney philosophy in a supervised environment for an extended period of time. Thus, the argument goes, it is this ongoing, on-the-job learning and experience that amounts to "academic training." The problem with this argument lies in the nature of the international students' on-the-job experience.

Some roles for international students seem to inherently qualify as academic training, in the sense that the roles seem connected to the students' underlying academic pursuits. Take the roles of concierge or resort hospitality (for hospitality majors) or character performer (for theater majors).²⁷⁷

But what about students who work in the Disney water parks as lifeguards,²⁷⁸ hand out towels and locker keys to guests,²⁷⁹ or fill soft drink

programecard.com/epresentation (last visited Feb. 28, 2011) (go to "Chapter Menu," then go to Chapter 7 at 00:34).

274. This is based on fifty weeks of working thirty to forty hours a week. Interview with "Riley," Cast Member, Walt Disney World, in Orlando, Fla. (Mar. 2, 2010) [hereinafter Riley Interview]. However, Disney "requires all . . . cast members to be fully available. This means working nights, weekends, holidays, and overtime during certain peak seasons." *E-Presentation: Disney College Program*, *supra* note 273 (go to "Chapter Menu," then go to Chapter 7 at 1:39).

275. Of course, if a student took advantage of just one collegiate course—take Corporate Analysis which includes thirty-seven contact hours and twenty-four hours of directed activities—then only 3%–4% of their time in the program would be spent on educational content. *See Disney Corporate Analysis Course Syllabus*, *supra* note 264.

276. *With a Smile and a Song* is a song from the Disney movie *Snow White and the Seven Dwarfs*. ADRIANA CASELOTTI, *Animal Friends/With a Smile and a Song*, on SNOW WHITE AND THE SEVEN DWARFS (Walt Disney 2008).

277. *Academic Exchange Experience: Role Descriptions*, *supra* note 29.

278. Interview with "Guadalupe," Cast Member, Walt Disney World, in Orlando, Fla. (May 28, 2009); Interview with "Mizuki," Cast Member, Walt Disney World, in Orlando, Fla. (May 28, 2009); *see also The Lifeguard Bit*, THE DISNEY ADVENTURE, <http://www.thedisneyadventure.moonfruit.com/#/the-lifeguard-bit/4526530940> (last visited Feb. 28, 2011); Marc Greenhill, *Lincoln Graduates Land Jobs in Disney World*, THE PRESS, Feb. 19, 2010, <http://www.stuff.co.nz/the-press/news/3347148/Lincoln-graduates-land-jobs-in-Disney-World>.

orders?²⁸⁰ International students hold roles in quick-service food and beverage at all of the Disney theme parks, taking orders, making change, clearing plates, and filling empty condiment dispensers.²⁸¹

The most curious role, however, must be that of the “showkeeper,” which is Disney-speak for custodial staff.²⁸² International students in this “role” clean bathrooms, empty and line trashcans, clean benches and streets, and eliminate “protein spills” (the euphemism used by Disney employees for vomit).²⁸³ Disney believes that showkeepers are at the core of “onstage” work. Custodians, in their visible white jumpsuits, interact with the public frequently by providing directions,²⁸⁴ taking photographs, and recommending eateries. Such frequent guest contact “means a lot of opportunities to create Disney magic”²⁸⁵ and practice the skills learned in Disney’s orientation program.

The view that such work ought to count as academic training is somewhat bolstered by the perspectives recorded on employees’ blogs. Several bloggers, in writing about the parallel Disney College Program, have focused on the concept of “creating Disney magic.” They have argued that it is always up to the individual student to keep a role from being mere work and to transform it into a Disney experience:

[I]t really is what you make of it. You can go to work and just refill the napkin containers and hate your job, or you can go out there, refill the napkin containers, interact with the guests, and help make someone’s trip that much more easy and

279. Interview with “Angel,” Cast Member, Walt Disney World, in Orlando, Fla. (May 28, 2009).

280. Interview with “Dominique,” Cast Member, Walt Disney World, in Orlando, Fla. (May 28, 2009).

281. Interview with “Xeï,” Cast Member, Walt Disney World, in Orlando, Fla. (May 28, 2009) [hereinafter Xeï Interview].

282. Ben Hultum, *The End of a Wonderful Journey . . .*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (Oct. 6, 2006, 1:10 AM), <http://bensdisneyexperience.blogspot.com/>.

283. Ben Hultum, *Hello Folks!*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (July 11, 2006, 12:32 PM), http://bensdisneyexperience.blogspot.com/2006_07_01_archive.html; see also Ben Hultum, *Fun Time at Work!*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (Oct. 6, 2006, 4:19 AM), http://bensdisneyexperience.blogspot.com/2006_06_01_archive.html.

284. See Ben Hultum, *Hello Folks!*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (July 11, 2006, 12:32 PM), http://bensdisneyexperience.blogspot.com/2006_07_01_archive.html (“[Y]esterday, a man and his daughter approached me who couldnt [sic] speak/understand much English, he knew VERY little. He wanted to get to the Sci-Fi restsurant [sic]/theater thing—I knew this because the only words I could distinguish were ‘Sci-Fi’ and ‘food in cars’ . [sic] I would have NEVER been able to direct the poor chap, so I became his personal escort for all of 15 minutes to make sure they got there[,] which made me feel better knowing I never sent a guest the wrong way . . .”).

285. Ben Hultum, *The Journey So Far . . . (Part 3)*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (Apr. 11, 2006, 2:50 AM), http://bensdisneyexperience.blogspot.com/2006_04_01_archive.html.

enjoyable.²⁸⁶

* * *

[Quick Service Food and Beverage] cast have their own special way of “making the magic” for guests- and even though a lot of people who go into the role initially may not be too enthused, they end up loving it before they leave. . . . It’s also possible that in this role, you’ll be given a certain amount of liberty to work independently in the field, which can be pretty fun.²⁸⁷

While such views suggest that there is a worthwhile experience to be had for optimists, it appears contrary to legislative intent to authorize J visa programs based upon what the participants are able to make of them, rather than what they actually are. After all, the term “academic training” implies, at a minimum, some sort of ongoing guidance, leadership, and learning. It does not imply self-study. Ultimately, it is difficult to see the majority of the roles at Disney as fulfilling Congress’ stated goal of educational advancement for exchange visitors.²⁸⁸

d. I Wan’na Be Like You:²⁸⁹ Training Disney’s International Workforce

The insufficiency of the “academic training” under the AEE is made evident by the way in which Disney set about training its own future employees of Hong Kong Disneyland. Disney invited 500 of Hong Kong Disneyland’s managers and cast members to Walt Disney World for five months.²⁹⁰ The trainees worked at the resort and were required to take seminars on “customer service, marketing, leadership and the history and philosophy behind Disney’s entertainment empire.”²⁹¹ The manager of operations for Walt Disney World called the intensive training “critical,” noting that when the 500 workers returned to Hong Kong, “they’re going to basically have to instill the culture in people who haven’t had the opportunity to come here for training.”²⁹²

One would think that the preparation Disney required of its own trainees should be the baseline for the academic training participants in the

286. Posting of xfkirsten to VisionsFantastic.com, *Disney College Program?* (Mar. 14, 2008, 5:30 PM), <http://www.visionsfantastic.com/forum/f62/disney-college-program-21865/>.

287. Chris Saribay, *Inside the Roles (I)*, DISNEY EDITION (Mar. 11, 2008, 12:00 AM), <http://chrissaribay.com/disney-blog/>.

288. 22 U.S.C. § 2451 (2006) (stating that the purpose of the act is to “promote international cooperation for educational and cultural advancement”).

289. *I Wan’na Be Like You* is a song from the Disney movie *The Jungle Book*. PHIL HARRIS, *I Wan’na Be Like You (The Monkey Song)*, on THE JUNGLE BOOK (Walt Disney Records 1967).

290. Mike Schneider, *Small World Much Different for Workers*, CHI. TRIB., Apr. 29, 2005, News Section, at 14.

291. *Id.*

292. *Id.*

AEE are supposed to receive. Yet it is not. Rather than receiving five months of intensive training, AEE students may only receive a single day and a half of orientation. This is clearly not what regulators had in mind when authorizing “academic training” much less what Congress had in mind when creating “educational exchanges.”

2. *Jolly Holiday*:²⁹³ The Summer Work Experience

The second experience offered through Disney’s International College Program is the Summer Work Experience (SWE). The SWE differs from the AEE in many ways and, in fact, has an entirely different regulatory underpinning. This section will examine Disney’s SWE and its unique regulatory background. This examination makes clear that Disney is in full compliance with the federal regulations, but that the regulations themselves are not in compliance with the underlying statute and so are subject to challenge.

The SWE program falls within federal regulations concerning “Summer Work Travel.”²⁹⁴ Summer Work Travel programs allow international post-secondary students to work and travel in the United States for a single, nonextendable, four-month visit over their summer vacations.²⁹⁵ They are collegiate in the sense that they are “[d]esigned for use by college students or at college level.”²⁹⁶ In contrast to other J visa-based programs, however, Summer Work Travel programs are not collegiate in the sense of “belonging to a college.”²⁹⁷

Indeed, the federal regulations do not require Summer Work Travel programs to include any academic component. Disney nonetheless features “[e]ducation” prominently in its online overview of the program, promoting the availability of Disney Learning Centers, “which are self-directed career resource centers” that include library resources, computer tutorials, and one-time Learning Activities, which explore topics such as career possibilities with Disney.²⁹⁸

As the name indicates, Summer Work Travel students come to the United States to work. For SWE participants, this means working at the Walt Disney World resorts for a minimum of thirty hours per week, but more typically forty to forty-five hours per week, with longer hours during peak and holiday seasons.²⁹⁹

293. *Jolly Holiday* is a song from the Disney movie *Mary Poppins*. DICK VAN DYKE, *Jolly Holiday*, on MARY POPPINS (Walt Disney Records 1964).

294. 22 C.F.R. § 62.32 (2010).

295. *Id.* § 62.32(a).

296. *Collegiate Definition*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/36309?rskey=z4TvON&result=1&isAdvanced=false#> (last visited May 25, 2011).

297. *Id.*

298. *Summer Work Experience: Education*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/summer/education_intro.html (last visited Mar. 1, 2011).

299. *Australia/New Zealand Work Experience: Pay Rates and Hours*, DISNEY INT’L PROGRAMS (Nov. 20, 2010), https://www.disneyinternationalprograms.com/seasonal/experience_payrates.html; see also *E-Presentation: Disney College Program*, *supra* note 273 (go to “Chapter Menu,” then go

a. Be Our Guest:³⁰⁰ “Suitability” for the Summer Work Experience

In contrast to its relationship with AEE participants, Disney is the visa sponsor for SWE students. As such, Disney must ensure that its program is “suitable to the exchange visitor’s background, needs, and experience” and that the visitor’s English skills are sufficient to participate in the program.³⁰¹ Additionally, per federal regulations, exchange visitors must “receive pay and benefits commensurate with those offered to their American counterparts.”³⁰²

The federal regulations do not expound on the statement that Summer Work Travel should be “suitable to the exchange visitor’s background, needs, and experience.”³⁰³ For example, there is no express requirement that the summer work relate in any way to the visitor’s major field of academic study,³⁰⁴ although this would be an easy proxy for “background, needs and experience.” As a result, students of all types—from Chinese language³⁰⁵ to Microbiology³⁰⁶ majors—participate in Disney’s Summer Work Experience. These students, as already discussed, often hold unskilled roles such as fast food dispensing or janitorial work.³⁰⁷

b. Poor Unfortunate Souls:³⁰⁸ Summer Work Travel as Neither an Educational Nor a Cultural Exchange

Far more interesting is the fact that there is no educational component to the Summer Work Travel generally and the SWE in particular. As already discussed, the Fulbright–Hays Act authorizes “educational exchanges”³⁰⁹ for students as well as “other exchanges” that promote “studies, research, instruction, and other educational activities.”³¹⁰ Clearly, the Summer Work Travel regulations cannot relate to either category because they are in no way “educational.” They are simply work programs.³¹¹

to Chapter 7 at 1:39) (“[Disney] requires all . . . cast members to be fully available. This means working nights, weekend, holidays, and overtime during certain peak seasons.”).

300. *Be Our Guest* is a song from the Disney movie *Beauty & the Beast*. ANGELA LANSBURY, *Be Our Guest*, on BEAUTY AND THE BEAST (Walt Disney Records 1991).

301. 22 C.F.R. §§ 62.10(a)(1), 62.32(b) (2010).

302. *Id.* § 62.32(e).

303. *Id.* §§ 62.10(a)(1), 62.32(b).

304. Contrast with 22 C.F.R. § 62.23(f)(3)(ii) (2010). See *infra* Part IV.B.2.b.

305. Xei Interview, *supra* note 281.

306. See *Myself*, LEOM’S DISNEY ADVENTURE, <http://leomgray.webs.com/myself.htm> (last visited Mar. 1, 2011).

307. See *supra* Part IV.B.1.c.

308. *Poor Unfortunate Souls* is a song from the Disney movie *The Little Mermaid*. PAT CARROLL, *Poor Unfortunate Souls*, on THE LITTLE MERMAID (Walt Disney Records 1989).

309. 22 U.S.C. § 2452(a)(1) (2006).

310. *Id.* § 2452(b)(10).

311. Nor, it must be said, is the Summer Work Travel program the only non-academic program set forth in the federal regulations. Camp Counselors are also exempt from academic requirements.

One could argue that the Summer Work Travel regulations must, therefore, relate to the “cultural exchanges” authorized by the Act. Yet those statutory provisions are extremely limited, open only to:

(i) visits and interchanges between the United States and other countries of leaders, experts in fields of specialized knowledge or skill, and other influential or distinguished persons;

(ii) tours in countries abroad by creative and performing artists and athletes from the United States, individually and in groups, representing any field of the arts, sports, or any other form of cultural attainment;

(iii) United States representation in international artistic, dramatic, musical, sports, and other cultural festivals, competitions, meetings, and like exhibitions and assemblies;

(iv) participation by groups and individuals from other countries in nonprofit activities in the United States similar to those described in subparagraphs (ii) and (iii) of this paragraph, when the Director of the United States Information Agency determines that such participation is in the national interest.³¹²

Summer Work Travel students do not fall within any of the above categories of cultural exchanges.

Because the Summer Work Travel regulations do not correspond to either the educational or cultural exchange provisions of the Fulbright–Hays Act, the statutory mandate for the J visa program, they are subject to challenge. For although the Secretary of Homeland Security has been authorized by Congress to establish regulations “as he deems necessary for carrying out his authority under the provisions of” the Immigration and Nationality Act,³¹³ that authority is not limitless. The Supreme Court has said, “It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.”³¹⁴ Any regulations adopted must be consistent with the underlying statute. In the case of the Summer Work Travel program, these regulations are subject to challenge under the Administrative Procedure Act, which authorizes

See 22 C.F.R. § 62.30 (2010). Au Pairs, in contrast, must complete not less than six semester hours of academic credit or its equivalent during their year of program participation. *Id.* § 62.31(a).

312. 22 U.S.C. § 2452(a)(2) (2006).

313. 8 U.S.C. § 1103(a)(3) (2006); *see also* *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 843–44 (1984) (“If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.”).

314. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

litigation to set aside agency regulations if they are “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”³¹⁵

3. Supercalifragilisticexpialidocious:³¹⁶ The Australia/New Zealand Work Experience

The third experience available through the Disney International College Program is the Australia/New Zealand Work Experience. The program is very similar to the SWE in all but its length. However, its statutory background is a little more interesting.

The Fulbright–Hays Act authorizes the President to “enter into agreements with foreign governments and international organizations, in furtherance of the purposes of this Act.”³¹⁷ Pursuant to that authority, the United States entered into separate memorandums of understanding with New Zealand and Australia in September 2007 that initiated a twelve-month student work and travel pilot program.³¹⁸ The actual agreements have not been made public, but the requirements for the programs are set out on United States Embassy Web sites³¹⁹ and in the United States Department of State Foreign Affairs Manual.³²⁰ Disney’s Australia/New Zealand Work Experience is one of fourteen programs in the United States that have been initially approved as sponsoring organizations for these programs.³²¹

The Australia and New Zealand programs track the Summer Work Travel regulations in all respects except for duration of the program. They are one-shot opportunities for New Zealand and Australian citizens who are post-secondary students or recent graduates to work in the United States for twelve months.³²² It is understood that participants will likely perform in unskilled service positions, though they are expected not to

315. 5 U.S.C. § 706(2)(C) (2006).

316. *Supercalifragilisticexpialidocious* is a song from the Disney movie *Mary Poppins*. JULIE ANDREWS, *Supercalifragilisticexpialidocious*, on *MARY POPPINS* (Walt Disney Records 1964).

317. H.R. REP. NO. 87-1197, at 3 (1961) (Conf. Rep.). This has been codified as 22 U.S.C. § 2453(a) (2006) (“The Director of the United States Information Agency is authorized to enter into agreements with foreign governments and international organizations, in furtherance of the purposes of this chapter.”).

318. *New Zealand and Australia Twelve-Month Student Work and Travel Pilot Programs*, U.S. DIPLOMATIC MISSION TO N.Z., http://newzealand.usembassy.gov/swt_faq.html (last visited Feb. 7, 2011); see also *Student Work and Travel Pilot Program: Frequently Asked Questions*, EMBASSY OF THE UNITED STATES: CANBERRA, AUSTL., http://canberra.usembassy.gov/student_work_travel_pilot_prog.html (last visited Mar. 1, 2011).

319. *New Zealand and Australia Twelve-Month Student Work and Travel Pilot Programs*, *supra* note 318; see also *Student Work and Travel Pilot Program: Frequently Asked Questions*, *supra* note 318.

320. See U.S. DEP’T OF STATE, 9 FOREIGN AFF. MANUAL 41.62 N4.12-4 (2009), available at <http://www.state.gov/documents/organization/87379.pdf>.

321. *Student Work and Travel Pilot Program: Frequently Asked Questions*, *supra* note 318.

322. *New Zealand and Australia Twelve-Month Student Work and Travel Pilot Programs*, *supra* note 318; see also *Student Work and Travel Pilot Program: Frequently Asked Questions*, *supra* note 318.

“displace American workers.”³²³

As discussed, Summer Work Travel does not include any requirements regarding academic coursework. Disney nonetheless informs potential participants in the Australia/New Zealand Work Experience about Disney’s on-site collegiate level courses,³²⁴ “professional development” studies specific to certain students with focused backgrounds in finance, theater production, and engineering,³²⁵ the “exploration” series focused on the operations of Walt Disney Resort,³²⁶ and additional learning and networking activities ranging from one-time presentations to multisession programs.³²⁷ Despite such advertisement, it is not easy for these international students to participate in the collegiate or professional development studies. The courses have limited enrollment and are reserved for U.S. students and those international students participating in the Academic Exchange Experience.³²⁸ Other international students must petition to be allowed to participate in these programs and are only allowed in on a space-available basis.

Regardless of what educational opportunities might be available to Australia/New Zealand Work Experience students, the bigger concern is that the program rests on the Summer Work Travel regulations, which, as previously discussed, are subject to challenge under the Administrative Procedure Act as exceeding the authorization of the Fulbright–Hays Act. The fact that the statute itself authorizes “agreements with foreign governments” does not change this analysis because such agreements must be made “in furtherance of the purposes of” the Act.³²⁹ Given that Summer Work Travel does not provide opportunities that are educational or cultural within the meaning of the Act, the underlying agreements exceed their statutory grounding.³³⁰

323. *Student Work and Travel Pilot Program: Frequently Asked Questions*, *supra* note 318.

324. Some of these classes include Advanced Studies in Hospitality Management, Corporate Analysis, Corporate Communication, Human Resource Management, Organizational Leadership, Hospitality Brand Management, Theme Park Management, Food & Beverage Operations in the Hospitality Industry, and Survey of Wines of the World. See *Academic Exchange Experience: Collegiate Course Information*, *supra* note 240; *Seminar Offerings for the Walt Disney World, Co. International Academic Program*, *supra* note 240.

325. *Academic Exchange Experience: Professional Development Series Course Information*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/education_pds.html (last visited Mar. 1, 2011).

326. *Academic Exchange Experience: Disney Exploration Series Course Information*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/education_des.html (last visited Mar. 1, 2011).

327. *Academic Exchange Experience: Additional Learning Opportunities*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/education_opportunities.html (last visited Mar. 1, 2011).

328. Arledge Interview, *supra* note 26.

329. 22 U.S.C. § 2453(a) (2006).

330. 22 U.S.C. § 2452(a).

4. Can You Feel the Love Tonight:³³¹ Cultural Exchange, Acculturation, and Disney's J Visa Programs

Temporarily putting aside the issue of whether Disney or the federal regulations underlying its programs are complying with the “academic” or “training” requirements of J visas, it is apparent that all three experiences within the Disney International College Program promote cultural cooperation and exchange.³³² Students in the Disney International College Program do gain an understanding of the United States, its culture, and its society by virtue of working for, rooming with, and dating Americans at the theme parks.³³³ At the same time, because all international students have onstage roles, they interact with the American public.³³⁴ Those interactions help to eliminate the American guests' stereotypes and inaccurate images of students' home countries and their citizens. Such cultural exchange was indeed a principal goal of the Fulbright–Hays Act.³³⁵

Likewise, the visiting international students also fulfill the other, historic goal of the J visa program: winning the hearts and minds of men and women overseas. There will always be people dissatisfied with the program,³³⁶ but many participants and graduates leave the International College Program enamored with Disney, corporate America, and the United States itself.³³⁷ While one could certainly argue that this particular

331. *Can You Feel the Love Tonight* is a song from the Disney movie *The Lion King*. ELTON JOHN, *Can You Feel the Love Tonight*, on *THE LION KING* (Walt Disney 1994).

332. See *supra* Part III.C.

333. See, e.g., Hillinger, *supra* note 114 (relating stories of international cast members who have roomed with and dated American cast members); Cindy Hval, *Their Happily Ever After Started at Disney World*, SPOKESMAN-REV (Spokane, Wash.), Feb. 21, 2008, at 10S.

334. See Hillinger, *supra* note 114.

335. See 22 U.S.C. § 2451 (2006). Note that despite the title of “cultural exchange,” the concept behind the Q visa is not “exchange” so much as “one-way street.” Whether the beneficiary of a Q visa gains insight into American culture and society is irrelevant to Q visa programs. The sole focus of the Q visa is whether the American public is gaining cultural awareness from the visa participant. Indeed, in the example of the temporary staffing company discussed earlier, *supra* Part III.E, the Q program was rejected, in part, because it was “primarily designed to offer foreign hospitality students and professionals a chance to gain experience in the American hospitality industry while furnishing the U.S. businesses with knowledgeable or experienced workers.” Rosen Letter, *supra* note 187, at 2.

336. See, e.g., Verrier, *supra* note 26 (discussing dissatisfaction with Q visa program); FutureCEO, *Disappointed by Disney*, WDWDMAGIC.COM (Nov. 27, 2002, 12:07 AM), <http://forums.wdwmagic.com/showthread.php?t=17028> (discussing general college program).

337. See, e.g., Riley Interview, *supra* note 274 (“I absolutely love the program. I can clearly say that it was the best decision of my life. . . . The friends I have made here are amazing and this program has made me realise even more than before that I want to move to the USA and try to find myself travel/tourism Marketing employment. . . . I wouldn't trade my experience here for the world!”); Ben Hultum, *The End of a Wonderful Journey . . .*, ONE MAN AND HIS BROOM: THE BLOG OF A SHOWKEEPER (Oct. 6, 2006, 1:10 AM), <http://bensdisneyexperience.blogspot.com/> (“Working at Disney-MGM Studios was amazing For anybody reading this who is considering the College Program/International College Program, I urge you to participate. I'm sure that no matter

goal underlying the J visa is as outdated as the Cold War, it is also arguable that this goal is even more important today given current political, public relations, and even terrorist attacks on the United States from abroad.

Of course, these concerns ignore the elephant in the room: money.

C. *Feed the Birds*:³³⁸ *Money and the Disney International College Program*

Disney's International College Program has many of the same financial benefits for Disney as the Disney Cultural Representative Program.³³⁹ International students are exempt from FICA taxes;³⁴⁰ they live in Disney's on-site housing;³⁴¹ and their ability to remain in the United States is tied to the terms of their visa, making them more dependable employees.³⁴²

And the international college program reaps even more financial benefits. Although international students earn the same as their American counterparts in the Disney College Program, they earn less than Disney's nonstudent labor, *including cultural representatives*.³⁴³ This is because the students are not covered by the collective bargaining agreement that governs the majority of the resort's workforce.³⁴⁴ As a result, Disney secures wage savings upward of \$15 million a year.³⁴⁵ This savings reflects wages only. Disney saves even more by not paying into pension plans or providing healthcare benefits to these students.³⁴⁶

D. *The Mickey Mouse March*:³⁴⁷ *Straying from Statute*

Many of the J visa beneficiaries who participate in Disney's International College Program satisfy federal requirements. Students who are placed in front desk or concierge positions at resort hotels, have an

what job you decide on[,] you will have a brilliant time but obviously, I very highly recommend Custodial! Even when the hours get tough, everybody gets along and there is an incredible amount of fun to be had each day. The pride and satisfaction of completing all of the challenges the program entails is truly priceless.”); Chris Saribay, “*The Big Blue World*,” DISNEY EDITION (Mar. 16, 2008, 12:00 AM), <http://chrisaribay.com/disney-blog/> (“[W]here else can you have such a rewarding experience and opportunity for personal growth?”); DisneyTimitu, *I LOVE Work (All About Working in Disney the Last Few Weeks)*, A YEAR TO REMEMBER (Dec. 26, 2008, 7:42 AM), <http://disneytimitu.livejournal.com/11879.html> (“I LOVE work.”).

338. *Feed the Birds* is a song from the Disney movie *Mary Poppins*. JULIE ANDREWS, *Feed the Birds*, on MARY POPPINS (Walt Disney Records 1964).

339. See *supra* Part III.D.

340. I.R.C. § 3121(b)(19) (2006).

341. *Academic Exchange Experience: Living*, DISNEY INT’L PROGRAMS, https://www.disneyinternationalprograms.com/j1/living_intro.html (last visited Mar. 1, 2011).

342. See *Cultural Representative Program: FAQs*, *supra* note 146 (“This visa authorizes employment for your specific company ONLY.”).

343. Hillinger, *supra* note 114; Jerkovich Interview, *supra* note 130.

344. Jerkovich Interview, *supra* note 130.

345. See *supra* notes 135–40 and accompanying text.

346. Schneider, *supra* note 140.

347. *The Mickey Mouse March* was the opening song for the *Mickey Mouse Club* television program.

underlying hospitality degree, and participate in the Disney collegiate courses are likely to meet both the letter and the spirit of the J visa regulations.

But Disney does not limit its J visa beneficiaries to such clearly compliant positions. Its international students who hawk trinkets, serve fast food, and clean up after guests are performing unskilled labor that is neither academic nor cultural, as understood by the Fulbright–Hays Act. They are also occupying positions that American workers are ready, willing, and able to fill.³⁴⁸

The Disney International College Program cannot be described as “fair, reflective of our values,” or even as a program that “works” under the law.³⁴⁹ The fact that the program continues to operate as it has for more than twenty-five years speaks volumes about how current immigration laws are enforced. It illustrates how companies with advocates can manipulate existing laws to reap financial gain without any consequences and how even regulators can wander away from statutory grounding.

V. CONCLUSION: ENCHANTED³⁵⁰

President Obama has called comprehensive immigration reform one of the “great challenges of our times,” noting that “the politics of who is and who is not allowed to enter this country, and on what terms, has always been contentious.”³⁵¹ “Our task then,” he has said, “is to make our national laws actually work.”³⁵²

If the President’s call for reform is heeded, Congress will be looking both to write new laws and to reform those laws already on the books. To make national laws that “actually work,” Congress must be willing to resist those who are looking to tailor such laws to their particular needs.

Indeed, the use of Q and J visas to help field the labor force at Walt Disney World shows how malleable the visa system is in the hands of a few powerful players. And Q and J visas evidence different malleabilities of our immigration law system. The Q visa shows the legislative malleability of the law—one individual persuaded Congress to enact new legislation in order to benefit a single company to the tune of millions of dollars per year. The J visa shows the malleability of the law in practice, taking great liberties with ideas of learning and education in a program designed to bring students into the United States from overseas. Disney has thereby found itself in the good graces of a federal immigration and visa system that is better known for its sometimes cruel inflexibility. The

348. Jerkovich Interview, *supra* note 130.

349. Obama, *supra* note 12.

350. *Enchanted* was a mixed live-action/animated feature film by Disney. ENCHANTED (Walt Disney Pictures 2007).

351. Obama, *supra* note 12.

352. *Id.*; see also Kori Schulman, *President Obama on the DREAM Act: “My Administration Will Not Give Up,”* White House Blog (Dec. 18, 2010, 12:53 PM), <http://www.whitehouse.gov/blog/2010/12/18/president-obama-dream-act-my-administration-will-not-give> (“[M]y administration will not give up on . . . the important business of fixing our broken immigration system.”).

immigration laws on the books and the throngs of tourists wearing Mickey Mouse ears in Florida have one thing in common—they are both inevitably susceptible to the magic of Disney.