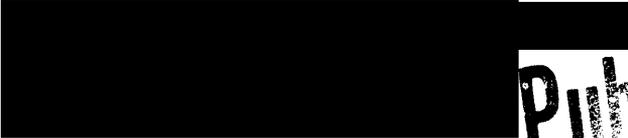




DA

U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

FILE: EAC-01-055-54502

Office: Vermont Service Center

Date:

AUG 3 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(iii)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

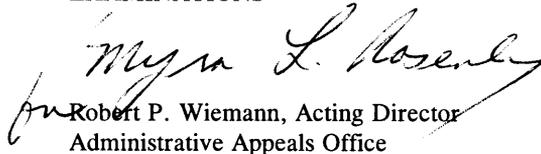
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a non-profit organization promoting Chinese opera in the United States. The beneficiary is a theatrical make-up artist. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking change of employer and extension of stay of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act"), as an essential support worker of an entertainer or entertainment group that is culturally unique. The petitioner seeks classification of the beneficiary to work with its productions for the 2001 season.

The director denied the petition finding that the beneficiary would not be directly supporting an entertainer or entertainment group that is in P-3 classification and is, therefore, ineligible for the benefit sought.

On appeal, the petitioner stated that it has booked one entertainment group for its season that will be in P-3 classification and further asserted that the beneficiary is essential to the success of its season.

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

8 C.F.R. 214.2(p)(3) provides, in pertinent part, that:

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

8 C.F.R. 214.2(p)(6)(i) further provides:

(A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing,

interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

8 C.F.R. 214.2(p)(3) states in pertinent part:

*Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

8 C.F.R. 214.2(p)(6) states, in pertinent part, that:

(iii) *P-3 classification as an essential support alien-*  
(A) *General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-3 classification based on a support relationship with a P-3 entertainer or P-3 entertainment group.

In order to establish eligibility for P-3 classification as an essential support alien, a petitioner must establish, in part, that the alien will be providing essential support services to a P-3 entertainment group with which the alien has a relationship and that the alien has experience in providing support services to that group. Here, the proposed position is essentially for the "house" make-up artist serving all the entertainment groups in the petitioner's season of productions. The fact that one of the entertainment groups performing during the season may be in P-3 classification is not sufficient to provide classification to the beneficiary as a P-3 essential support alien. The P-3 support alien must be coming solely for the support of a single P-3 entertainment group.

In addition, the petitioner has not shown that the beneficiary has ever had a working relationship with the P-3 entertainment group booked by the petitioner or shown that she has ever had experience providing essential support services to that group. For all these

reasons, the petitioner has failed to overcome the director's objection.

The denial of this petition is without prejudice to the petitioner pursuing classification of the beneficiary under any other provision for which she may be eligible.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.