



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-99-123-51319

Office: Vermont Service Center

Date: SEP 25 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 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

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.

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
for 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 rejected.

The petitioner in this matter is described as non-profit Chinese cultural center and performing arts company. The beneficiary is described as a three-member performing arts group with specialty in Chinese opera. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act") as an entertainment group in a culturally unique field.

The director noted that each of the members of the beneficiary group are present in the United States having overstayed their original nonimmigrant visas. The director denied the petition finding that the petitioner failed to establish that the members of the beneficiary group had a foreign residence to which they intend to return as required by the statute. See also 8 C.F.R. 214.2(p)(1)(i).

One of the three beneficiaries filed the instant appeal from the decision.

8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. (emphasis added.)

8 C.F.R. 103.3(a)(2)(v) states:

*Improperly filed appeal--(A) Appeal filed by person or entity not entitled to file it--(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding; but rather, by one of the beneficiaries. Therefore, the appeal has not been properly filed and must be rejected.

**ORDER:** The appeal is rejected.