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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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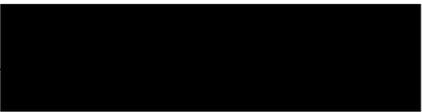
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JAN 09 2002

FILE: EAC-01-132-52635 Office: Vermont Service Center Date:

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)

PUBLIC COPY

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.

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, Director
Administrative Appeals Office

development of his or her art form. The program may be of a commercial or noncommercial nature.

8 C.F.R. 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

(A) the evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written consultation from a labor organization.

The center director denied the petition finding that the primary duties of the beneficiary appeared to be that of a dance instructor for youth and determining that it had not been established that such duties would satisfy the requirement of being culturally unique.

On appeal, an official of the petitioner stated that they believe that the beneficiary's "personal experience and accomplishment in Asian folk dance fully meet to the requirement of this section."

In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States in order to perform, teach, or coach as a culturally unique artist in a commercial or noncommercial program that is culturally unique.

In this case, the petitioner does not seek to employ the beneficiary in a single role or capacity as is usual. The petitioner presented several statements describing the proposed duties of the beneficiary. The petitioner presented a "performance schedule" reflecting that it sponsors a performance or presentation approximately every one to two months at various venues including schools and libraries. In a statement dated March 16, 2001, the petitioner stated that it sought to employ the beneficiary as both a performer and as art director for these performances.

In another statement dated August 16, 2001, the petitioner stated:

Except for organizing our regular performances...this center has two young people clubs for Asian arts, one for

American Korean young people. For that, [the beneficiary] is responsible for taking instruction of Korean Dances for America Korean young people at this club, every day 2 p.m. thru 5:30 p.m.

On review, it must be concluded that the petitioner has failed to overcome the director's objection. While the program in which a P-3 classified alien artist may be diverse, all of its components must be "culturally unique" as defined under the pertinent regulations. While being a performer and art director for a series of folk dance performances may be considered culturally unique, the petitioner has not established that dance instruction at a young people's club is necessarily a noncommercial program that is culturally unique. The petitioner did not furnish a detailed description of the young people's club it operates, the nature of the population it serves, or the role that dance instruction takes in that program. Absent a comprehensive description of the beneficiary's duties and the program in which she would be employed, it cannot be concluded that the alien artist would be employed as an artist in a culturally unique program.

The burden of proof in these proceedings rests solely 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.