

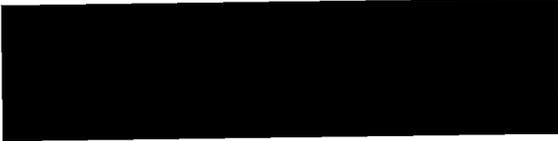
D9

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 20 2003

FILE: LIN 03 154 53391

Office: NEBRASKA 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Croatian cultural center. The beneficiary is a musical group consisting of a vocalist and five musicians.

The petitioner seeks P-3 classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), as a culturally unique entertainment group. The petitioner seeks to employ the beneficiary for a period of one week to participate in three performances.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary would be coming to the United States to perform in programs that are culturally unique. The director further determined that the petitioner failed to establish that the six named beneficiaries constitute a group as defined in the regulations. Finally, the director determined that the petitioner failed to establish that the beneficiary qualifies as an artist or entertainer under a culturally unique program.

On appeal, counsel for the petitioner submits a brief and additional documentation.

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) (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.

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) (6) (ii) states that a petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the group's skill in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in news papers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

The first issue raised by the director is whether the petitioner established that the beneficiary is coming to the United States to perform, teach or coach as a culturally unique artist or entertainer in a culturally unique program.

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.

As evidence that the beneficiary is qualified as a culturally unique performer, the petitioner submitted a consultation from the American Federation of Musicians and statements from the Croatian Musician Union, Croatia Records and Dallas Records. The first statement provides that the five band members belong to the Croatian Musicians Union. The other two statements provide that the lead vocalist recorded two albums for Croatia Records and is currently bound with a long-term exclusive recording contract with Dallas Records.

The petitioner submitted translated newspaper and magazine articles about the lead vocalist. One article states that the lead vocalist hosted Coca-Cola's Airplay Charts, a radio show that was aired on fourteen radio stations across Slovenia. Another article states that the lead vocalist posed for Cosmopolitan magazine in New York. A third article is about a novel that features the female vocalist

as the main protagonist. Another article, one paragraph in length, mentions the lead vocalist. Yet another states that the lead vocalist is wearing a Gucci dress. The petitioner also submitted untranslated copies of CD covers featuring the lead vocalist. In response to a request for additional evidence, the petitioner submitted a letter dated April 22, 2003 from the Executive Secretary of the Croatian Musicians Union stating that the beneficiary's "music has a very Dalmatian flare."

In review, the evidence fails to establish that the beneficiary is skilled in performing a culturally unique art form.

The next issue raised by the director is whether the petitioner established that the beneficiary is a group. The director noted "while the petitioner is requesting to classify all of the beneficiaries as a group, there is no evidence to indicate that they meet this definition."

8 C.F.R. 214.2(p)(3) defines "group" as "two or more persons established as one entity or unit to perform or to provide a service."

Initially, the petitioner provided the Bureau with brief biographies of the members of the beneficiary group and indicated that Damir Liposek joined the Scorpion band in 1998 and Damir Somen joined in 1999. In response to a request for additional evidence, the petitioner indicated that all five members of the band had been associated with the lead vocalist since 1998. On appeal, the petitioner provided the Bureau with a statement from the Croatian Musicians Union stating that all six members of the beneficiary had been performing exclusively together since 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In review, the petitioner's evidence is not persuasive in the absence of additional documentation in the form of reviews, and articles about the group.

The final issue raised by the director is whether the petitioner established that the beneficiary is coming to

the United States to perform in a culturally unique program. The petitioner provided the Bureau with an itinerary showing that the beneficiary would perform in three concerts in a one-week period. The first performance would be sponsored and held at the Croatian Cultural Center of Chicago. The second concert would be sponsored by the Cleveland Croatia Alumni Association "to promote our Croatian culture." The third would be sponsored by the Cardinal Stepinac Croatian Cultural Club's spring cultural event to be held at the Sts. Cyril and Methodius Croatian Catholic Church Hall in New York City. In response to a request for additional evidence, the petitioner submitted a statement indicating that the beneficiary would perform in a "typical Croatian event" involving two segments, one conducted by a Croatian dance group which performs in traditional Croatian dance costumes, and another involving the beneficiary. The petitioner submitted a letter from the President of the Cardinal Stepinac Croatian Cultural Club stating that the beneficiary would perform traditional Croatian songs. The evidence is insufficient to establish that these events are culturally unique performances.

The petitioner submitted a favorable consultation from the American Federation of Musicians on behalf of the beneficiary. Consultations are advisory and are not binding on the Bureau. 8 C.F.R. § 214.2(p)(7)(i)(D).

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.