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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



FILE: WAC 02 282 51055 Office: CALIFORNIA SERVICE CENTER Date: **AUG 20 2003**

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:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an independent music production company. The beneficiary is a member of the Omar Sosa musical ensemble.

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 member of a culturally unique entertainment group. The petitioner seeks to employ the beneficiary as a performing artist for a period of four months.

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 all culturally unique to the beneficiary's country of origin, Cuba. The director determined that not all of the performances would be culturally unique to the beneficiary's home country; instead, the events consist of diverse musical styles. The director further found that the beneficiary would be singing in Yoruban, a West African language, and not Cuban; therefore, she would not be performing in a program that is culturally unique to Cuba. The director further found that the petitioner failed to submit a viable contractual agreement or a complete itinerary.

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)(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 newspapers, 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 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.

The next issue raised by the director is whether the petitioner established that the beneficiary would be coming to the United States to perform or teach in a culturally unique program. The director stated that "all performances in the event or events [must] be culturally unique solely to the beneficiary's home country." This portion of the director's decision shall be withdrawn. The definition of "culturally unique" set forth in the regulations is more expansive than the director's determination.

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.

In review, the beneficiary has a style that is culturally unique to her Cuban-Yoruban ethnicity. Nonetheless, the record does not demonstrate that the beneficiary will perform in events that are culturally unique. The petitioner provided the Bureau with an itinerary showing

that the beneficiary would perform in two jazz concerts and would teach workshops. The first concert is described as the first full-length symphonic work of Cuban composer and pianist Omar Sosa at the Oakland East Bay Symphony. The evidence on the record shows that the work includes folkloric melodies and rhythms from Africa, Cuba and Venezuela. The petitioner submitted to the Bureau a letter from two representatives of Dimensions Dance Theater (DDT) stating it was sponsoring the production of *From Africa to America*, a multi-disciplinary work choreographed by Artistic Director [REDACTED] in collaboration with Cuban composer and pianist Omar Sosa. In review, the petitioner failed to establish that the beneficiary would be coming to the United States to perform in culturally unique performances. The evidence indicates that the beneficiary would be performing in culturally eclectic programs, rather than culturally unique ones.

In relation to 8 C.F.R. § 214.2(p)(6)(ii)(B), the petitioner submitted more than thirty reviews of Martha Galarraga (the beneficiary) and Omar Sosa (the group leader).

The petitioner submitted a favorable consultation from the American Federation of Musicians on behalf of the beneficiary.

On appeal, counsel for the petitioner submitted an adequately detailed itinerary. Counsel also submitted letters evidencing the terms of the contractual agreement between the petitioner and the beneficiary. The petitioner has overcome these two objections of the director.

In review, the petitioner has established that the beneficiary is qualified as a culturally unique performer; but failed to establish that the beneficiary would be coming to the United States to participate in culturally unique programs or performances.

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 failed to meet that burden.

ORDER: The appeal is dismissed.