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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
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invasion of personal privacy**

[REDACTED]

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

FILE: WAC 03 056 55583

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 20 2003**

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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:

[REDACTED]

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

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 entertainment producer and provider. The beneficiary is an entertainment group called the Pepperonis, consisting of a five members who sing, dance, perform skits and tell jokes in Tagalog and English.

The petitioner seeks P-3 classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as a culturally unique entertainment group. The petitioner seeks to employ the beneficiary for a period of one year to perform at two venues in the San Francisco Bay area.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as a culturally unique artist or entertainer. The director further determined that the petitioner failed to establish that the beneficiary would be coming to the United States to perform 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 qualifies as a *culturally unique artist or entertainer*.

As evidence that the beneficiary is qualified as a culturally unique performer, the petitioner submitted a letter from its representative stating that: "the [REDACTED] perform a unique Filipino art form known as 'Sing Along Masters.' These performers sing, dance, perform skits and tell jokes in Tagalog and English. Sing Along Masters are common in Philippine night clubs and on Philippine television shows." The petitioner also submit a letter written by the Philippine Department of Tourism's Undersecretary stating that "the Department of Tourism acknowledges the Pepperonis . . . [a group] of professional and legitimate Filipino entertainers (composed of sing-along masters and stand-up comedians) [has] had successful performances in the Philippines and abroad in the field of music and entertainment."

The petitioner also provided the Bureau with numerous reviews of the beneficiary's performances and letters of endorsement.

On appeal, the petitioner submits a letter from the owner of a nightclub that is listed on the beneficiary's itinerary. The letter states:

The [REDACTED] performs "culturally unique shows" . . . I consider their shows as culturally unique because these remind us Filipinos of what has evolved from what was known then as the "Kundiman" which originates from San Miguel,

Bulacan. The Kundiman was the popular type of entertainment of its time describing the Filipino way of life during the dry season. Music and songs were played every evening by cheerful and happy youths accompanied by guitar and other instruments."

On review, the evidence is insufficient to establish that the beneficiary qualifies as culturally unique performer. The petitioner failed to establish that either standup comedians or "sing along masters" are culturally unique art forms. The nightclub owner's description of the beneficiary's performance as akin to "Kundiman" is vastly different from the descriptions provided in the form of reviews and acknowledgements.

The next 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 at two nightclubs. The petitioner submitted a contract that states that the beneficiary would provide the petitioner with sing-along masters and comedians to work as entertainers for performances as the main featured singers/comedians in the musical comedy shows. The evidence is insufficient to establish that these events are culturally unique performances within the meaning of the regulations.

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.