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

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



FILE: WAC 02 225 50196

Office: CALIFORNIA SERVICE CENTER Date:

DEC 22 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:



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 Citizenship and Immigration Services (CIS) 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 a nonprofit dance organization, seeking to continue to employ the beneficiary as a folk dancer. According to the evidence on the record, the beneficiary last entered the United States on June 6, 1995 as a P-3 nonimmigrant. The beneficiary is a 37-year old native of the former Soviet Union and citizen of Moldova.

The petitioner seeks an extension of 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 performer. The petitioner seeks to continue to employ the beneficiary for one year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary would perform in culturally unique events, and that all events or activities are culturally unique events. The director found that the petitioner failed to establish that the beneficiary continues to qualify for classification as a culturally unique alien and failed to submit a contract between the petitioner and the beneficiary.

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.

The regulation at 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 newspapers, journals, or other published materials; and

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

The first issue to be addressed in this proceeding 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.

The director noted that the petitioner failed to establish that the beneficiary would perform, teach or coach in culturally unique programs or events.

On appeal, counsel for the petitioner asserts that because the petitioner is dedicated to promoting traditional dance and music from the many ethnic groups resident in the United States, all of its performances are necessarily culturally unique. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In review, the evidence fails to establish that the beneficiary is coming to perform in events that are culturally unique. According to the evidence, the beneficiary participates in performances that include the traditions of five continents. Clearly then the beneficiary's style is not unique to a particular country, nation, society, class, ethnicity, religion, or tribe. [Emphasis added.] Rather, the beneficiary's style incorporates an amalgam or a repertoire of different cultures.

The next issue to be addressed is whether the petitioner established that the beneficiary is a culturally unique artist. Again, the petitioner failed to sustain its burden of proof. The record indicates that the beneficiary performs classical ballet, Russian, Bulgarian, Hungarian, Romanian, Cuban, Indian, South African, Turkish, Canadian, American and Armenian dances. The beneficiary is not performing in a single genre that is unique to a particular ethnicity or country.

The final issue to be addressed in this proceeding is whether the petitioner provided CIS or AAO with a copy of its contract with the beneficiary. On appeal, the petitioner for the first time submits a copy of a deal memo between the petitioner and beneficiary that sets forth the terms of the oral agreement between the parties. The deal memo is undated and neither the memo nor the record establish that the petitioner and the beneficiary entered into an agreement prior to the filing date of the petition. The regulation at 8 C.F.R. § 103.2(b)(12) provides that the evidence must establish eligibility at the time the petition is filed. The petitioner failed to satisfy this requirement.

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.