



U.S. Citizenship  
and Immigration  
Services

*DA*

[REDACTED]

FILE: WAC 03 007 50871 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

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]

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**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*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 a nonprofit religious organization. The beneficiary is a musician.

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 entertainer. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's performances would be held at culturally unique events.

On appeal, counsel for the petitioner submits a brief.

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.

The regulation at 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 regulation at 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.

The regulation at 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 issue to be addressed in this proceeding is whether the petitioner established that all of the beneficiary's performances or presentations would be culturally unique events.

On appeal, counsel for the petitioner asserts that the director erred because he "failed to apply the correct standard." Counsel states "since the Service itself misrepresented the regulations by stating that the performance had to be *at* a cultural event, it is clear that [the director] did not accord [the petitioner] the benefit of the law in reaching their conclusion."

In review, the director correctly cited the relevant regulation, 8 C.F.R. § 214.2(p)(6)(ii) that states, in pertinent part: "[a] petition for P-3 classification shall be accompanied by . . . [e]vidence that all the performances or presentations will be culturally unique events."

The petitioner initially indicated that it would incorporate the beneficiary's music in its Sunday worship services and eventually "cut CD's over the next two or three years." On appeal, counsel for the petitioner asserts that the beneficiary will perform Brazilian music as part of the petitioning church's music program. Counsel states:

The music programs planned by the church are all culturally unique events where the culturally unique music will be the platform for the entire musical content of every service. Therefore, as [the beneficiary's] music has been recognized as culturally unique, each performance or event will be culturally unique.

In review, the evidence indicates that the beneficiary will perform Brazilian music at the petitioner's church services. While the petitioner restrictively describes the music component of church services as the event, the director correctly ascertained that the proposed events encompass the entire church service. The petitioner failed to establish that its church services are culturally unique events in their entirety.

Counsel for the petitioner asserts:

It is immaterial that a sermon or prayer takes place before or after the culturally unique events of the music program featuring [the beneficiary's] performance. It would be tantamount to saying that if a M.C. tells a joke or makes an unrelated announcement about a fundraiser or anything else unrelated to the music at a club or other venue where a culturally unique music event is happening, the event loses its cultural uniqueness because

of this.

Counsel's argument is not persuasive. A joke or an announcement is incidental to the event. Here, the beneficiary's musical performance is one component of the petitioner's church service. The church service is not incidental to the event; it is the event.

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 Citizenship and Immigration Services (CIS). 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.