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U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 058 52346 Office: NEBRASKA SERVICE CENTER Date: **DEC 15 2005**

IN RE: Petitioner:
Beneficiaries:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 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

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.

Mark Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiaries 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 entertainers in a culturally unique program.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries met the requirements of Title 8, Code of Federal Regulations, Part 214.2(p)(6) to qualify as a P-3 artists or entertainers under a culturally unique program.

On appeal, the petitioner submits a statement 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.

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.

Finding the evidence insufficient, on December 28, 2004, the director requested the petitioner to submit additional evidence (RFE). The director requested that the petitioner submit the requisite documentation set forth at 8 C.F.R. § 214.2(p)(6):

(ii) Evidentiary criteria for a petition involving a culturally unique program. 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 skills 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 director further requested the petitioner to submit a list of members of the group, including their names, each member's function within the group, and how long each member had been with the group.

In response to the director's RFE, the petitioner asked the director to render a decision based on the evidence in the record. The petitioner did not submit additional evidence in response to the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director denied the petition in a decision dated January 4, 2005. The petitioner submitted a timely appeal with additional evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiaries are culturally unique entertainers. In a letter dated December 4, 2004, the petitioner stated that the beneficiaries were "at the height of their popularity with the growing numbers of Bosnian refugees that have entered the United States in the last few years." The petitioner submitted brief biographical statements written by each beneficiary. The statements indicate that each beneficiary is a professional singer. The statements are silent as to the type of music performed. The petitioner submitted three untranslated articles. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be

accorded any weight in this proceeding. The petitioner submitted a letter from a record company stating that [REDACTED] is an exclusive singer who had contracted to cut records. The letter says nothing about the type of music [REDACTED] presents. The petitioner submitted a letter stating that [REDACTED] is a member of a professional singers' union. Finally, the petitioner submitted a favorable consultation letter from the American Federation of Musicians of the United States and Canada asserting that the beneficiaries meet the standards for cultural uniqueness. Consultations are advisory in nature and are not binding on Citizenship and Immigration Services (CIS). 8 C.F.R. § 214.2(o)(5)(i)(D).

The second issue to be addressed in this proceeding is whether the petitioner established that all of the beneficiaries' performances would be culturally unique. The petitioner submitted no initial evidence nor evidence in response to the RFE relating to the content of the beneficiaries' performances. The AAO affirms the director's finding that the petitioner failed to establish that any of the beneficiaries' performances would be culturally unique.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visá petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1362. Here, that burden has not been met.

ORDER: The appeal is dismissed.