U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

D9

[redacted]

FILE: EAC 05 021 52807 Office: VERMONT SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center 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 is a sports bar restaurant. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking 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 artist.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was coming to the United States to perform, coach or teach in a culturally unique program. The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary is a culturally unique artist. The director further found that the petitioner had failed to submit the required consultation.

On appeal, counsel for the petitioner submits additional evidence.

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 petitioner in this case initially submitted evidence including copies of flyers advertising the beneficiary's scheduled performances in Albania and at the petitioning organization's restaurant. The petitioner also submitted an employment verification letter written by the petitioner on the beneficiary's behalf.

Finding the evidence insufficient to establish eligibility for the classification sought, the director requested that the petitioner submit evidence (RFE) on November 2, 2004. In the RFE, the director requested evidence relating to several P visa classifications in the alternative. The petitioner initially indicated that it was seeking P-1 classification on the beneficiary's behalf. The director noted that an individual performer is not eligible for a P-1 visa classification, but if she was a member of a group, to submit a copy of the approval notice for the group. In the alternative, the director indicated that the petitioner could submit evidence establishing that the beneficiary was an essential support personnel or a culturally unique artist. The director specifically requested that if the petitioner sought P-3 classification, it should submit affidavits, testimonials, or letters from recognized experts, attesting to the authenticity and excellence of the alien's or group's skills in performing or presenting the unique or traditional art form. The director informed the petitioner that it must explain the level of recognition accorded to the beneficiary in her native country or in another country, and give the credentials of the expert indicating the basis of his or her knowledge of the alien's skill and recognition. The director also requested a written consultation from an appropriate labor organization.

In response to the RFE, the petitioner submitted a letter written by [redacted] of the Albanian American Woman's Organization, a copy of a contract between the petitioner and the beneficiary, and additional event flyers.

On appeal, the petitioner submits additional evidence in the form of a letter written by [redacted], a newspaper advertisement placed in the April 15, 2005 edition of a local Clinton, NJ paper and a handwritten banner which was posted at the petitioning restaurant. 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 is whether the petitioner established that the beneficiary seeks admission to the United States in order to perform as a culturally unique artist.

In response to the RFE, the petitioner submitted an undated letter, written by the director of the Albanian American Woman's Organization, stating that the beneficiary is "by far one of the few internationally recognized Albanian singers in Europe." She further stated that her organization had entered into a contract with the petitioner to hold monthly Albanian nights at the petitioning organization's restaurant. The petitioner submitted an agency contract dated October 22, 2005, signed by the beneficiary and the petitioner in which

the petitioner contracts to use his best effort to secure remunerative performances, recording sessions, exhibitions for the beneficiary. The contract is silent as to the genre of music to be performed. The petitioner submitted a flyer promoting Albanian Nights every Tuesday through the month of December with the beneficiary as a special guest entertainer. The petitioner submitted flyers for performances in Albania, but they fail to specify the nature of the performances. In review, the evidence is insufficient to establish that the beneficiary is a culturally unique artist. The petitioner failed to submit affidavits or letters from *experts* attesting to the authenticity of the beneficiary's skills in performing a unique or traditional art form. The petitioner failed to submit any affidavits. The letter submitted from the Albanian American Woman's Organization failed to provide the credentials of the expert indicating the basis of his or her knowledge of the alien's skill and recognition. International recognition is not necessarily tantamount to cultural uniqueness.

The next issue to be addressed in this proceeding is whether the petitioner established that the beneficiary was coming to the United States temporarily and solely to perform, teach, or coach in a culturally unique program. The petitioner failed to establish that all of the beneficiary's performances would be culturally unique. According to the evidence on the record, the beneficiary would perform one night a week at the petitioner's restaurant and that the petitioner had advertised the beneficiary's performances to be held at its "Albanian Nights."

While the evidence indicates that the beneficiary has performed as an Albanian singer, it does not establish that the beneficiary would be coming to the United States solely to perform as a culturally unique artist in culturally unique programs or presentations.

Finally, the petitioner failed to submit a consultation as required by the regulation at 8 C.F.R. § 214.2(p)(6)(v). In the RFE, the director requested a consultation but the petitioner failed to submit one. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa 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.