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U.S. Citizenship  
and Immigration  
Services

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DA



FILE: WAC 03 211 53798 Office: CALIFORNIA SERVICE CENTER Date: **MAY 23 2005**

IN RE: Petitioner:  
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:

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.

*Maui Johnson*

*SR* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The California Service Center Director denied the nonimmigrant visa petition in a decision dated March 2, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner in this matter is a music video production company. The beneficiary is a singer. 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 an entertainer in a culturally unique program. The petitioner seeks to employ the beneficiary for a period of six months.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's performances would be culturally unique. The director also determined that the petitioner failed to provide an itinerary of the beneficiary's performances.

On appeal, the petitioner submits 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, in pertinent part, that all petitions for P classification shall be accompanied by:

(A) The evidence specified in the specific section of this part for the classification;

\* \* \*

(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)(ii) further provides:

*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 . . . and giving the credentials of the expert, including the basis of his or her knowledge of the alien'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 evaluated in this proceeding is whether the petitioner established that the beneficiary's performances would all be culturally unique.

Finding the evidence insufficient, the director requested the petitioner to submit additional evidence (RFE). In response to the RFE, the petitioner submitted copies of DVD covers of karaoke music. The DVD covers feature the beneficiary and other individuals dressed in traditional Laotian garb. The petitioner also submitted photographs of the beneficiary standing on stage with a microphone. The petitioner also submitted a letter written in English by a government official in the Department of Arts of the Lao People's Democratic Republic.

The letter is insufficient because it fails to state the credentials of the attestation's author and the basis of his knowledge of the beneficiary's skill.

The petitioner failed to submit reviews or other published material in response to the RFE. On appeal, the petitioner submits a full page ad featuring the beneficiary in the [REDACTED] dated March 23, 2004 and a poster advertising the beneficiary's performances in the U.S. "depending on the approval of the INS."

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The second issue raised by the director is the petitioner's failure to submit an itinerary to Citizenship and Immigration Services (CIS) as required by the regulation at 8 C.F.R. § 214.2(p)(2)(ii)(C). The director specifically requested an itinerary from the petitioner in his RFE. The petitioner failed to submit an itinerary either initially or in response to the RFE. On appeal, the petitioner submits a poster listing dates and places of live performances. AAO will not consider evidence submitted for the first time on appeal. *Supra*. It is further noted that according to the petitioner and beneficiary's employment contract, the beneficiary agreed to sing four albums a year. The contract is silent as to live concerts. The Form I-129 petition indicates that the petitioner would perform at concerts throughout the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the director's decision, the petitioner failed to submit a consultation from a labor organization with expertise in the area of the beneficiary's skill as required by the regulation at 8 C.F.R. § 214.2(p)(6)(v). For this additional reason, the petition may not be approved.

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.