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U.S. Citizenship
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FILE: WAC 06 186 52752 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner:
Beneficiary:



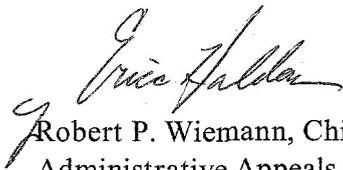
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition in a decision dated November 8, 2006. The petitioner appealed the director's decision to deny the petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is an entertainment company engaged in acrobatic show business. 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), for a one-year period. The petitioner seeks to employ the beneficiary temporarily in the United States in P-3 status as an acrobat performer in a culturally unique program.

The director denied the petition, finding that the petitioner failed to establish that it was a circus that was nationally recognized as outstanding for a sustained and substantial period of time as required by 8 C.F.R. § 214.2(p)(4)(iii)(C). On appeal, the petitioner indicated on Form I-290B, Notice of Appeal to the AAO, that it would submit a brief and/or additional evidence to address the director's denial within thirty days. Although the petitioner submitted a brief statement on the Form I-290B, it failed to adequately address the director's conclusions. In this brief statement, the petitioner states, "The decision need [sic] reconsideration. The petitioner might need more time to response the request for evidence."

Upon review, however, the record of proceeding reveals that the director's decision was in error. Specifically, despite the petitioner's request for consideration of the beneficiary as a P-3 entertainer under a culturally unique program, and despite the director's issuance of a request for evidence on July 24, 2006 requesting additional evidence with regard to the "culturally unique" standard, the director's denial was based on the petitioner's failure to comply with evidentiary criteria required for P-1 classification of an alien as a member of a nationally recognized circus.

The proper standard for evaluation of this petition is set forth at 8 C.F.R. § 214.2(p)(6)(ii), which 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 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.

Upon review of the record as it currently stands, the petitioner has not met its burden. The record contains no affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing the claimed unique or traditional art form. Moreover, despite submitting several excerpts from newspapers in response to the request for evidence, these documents merely advertise the performances offered by the petitioning entity and the beneficiary and do not serve as evidence that the performances are culturally unique.

Consequently, the director's denial of the petition will be withdrawn and the petition will be remanded for a new decision. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The director's decision will be certified to the AAO, if adverse to the petitioner, upon entry of a new decision.

ORDER: The director's decision of November 8, 2006, is withdrawn. The matter is remanded to the director for further action and consideration of the above discussion and the entry of new decision that, if adverse to the petitioner, will be certified to the AAO upon completion.