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**U.S. Citizenship
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Services**

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FILE: EAC 06 041 51888 Office: VERMONT SERVICE CENTER Date: **JUL 29 2008**

IN RE: Petitioner:
Beneficiary:

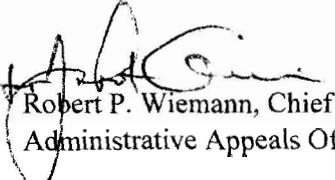


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner in this matter is self-described as a Chinese business development and cultural exchange center. The petitioner seeks 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 as a singer for a one-year period.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's performances would be culturally unique events as required by the regulation at 8 C.F.R. § 214.2(p)(6)(i)(B). The director denied the petition, in part, finding that the petitioner failed to submit a consultation from an appropriate labor organization as required by subparts (p)(2)(ii)(D) and (p)(7)(v) of 8 C.F.R. § 214.2.

On appeal, the petitioner provides additional documentation, some of which had been previously submitted, but does not provide a written brief or statement.

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 such an 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.

Pursuant to 8 C.F.R. § 214.2(p)(6)(i):

- (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.

Pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(ii), a P-3 classification petition involving a culturally unique program 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 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 addressed in this proceeding is whether the petitioner established that the beneficiary's performances would be culturally unique events as defined by the pertinent regulations.

The petitioner filed the nonimmigrant petition on November 22, 2005. In a letter dated November 6, 2005, the petitioner explained that its organization has previously hosted Chinese Moon Festivals, Chinese Spring Festivals, and "some more Culture and Art shows, such as singing, dance and music performances." The petitioner expressed the need for "highly skilled staffs" to deal with upcoming Chinese events and programs, and noted that it requires employees who have "Eastern and Western Culture background," as well as "extraordinary ability in dance, singing or art experiences and special knowledge at stage." The petitioner stated that the beneficiary would hold the position of "singer" and would be responsible for preparation of singing and dancing performances; training other singers and dancers; preparing performance schedules; serving as a judge for "some culture event competition"; and assisting the organization's president with "the preparation of the Parade and ceremony."

The petitioner provided the following documentary evidence in support of the petition:

- An advertisement for a Lunar New Year Parade, Lunar New Year Ceremony, and Lunar New Year Festival to be held on January 29, 2006 in Flushing, New York. The petitioner is identified as the organizer of the event.

- An advertisement for a Lunar New Year Parade, Lunar New Year Ceremony, and Lunar New Year Festival held on February 12, 2005 in Flushing, New York. The petitioner is identified as the organizer of the event.
- Advertisements for the 5th Annual International Moon Festival held on September 17 and 18, 2005 in Queens, New York, which was also organized by the petitioner. The specific events mentioned on the flyer are a kite show, a "multicultural performance," a fireworks display, and a street fair.
- An article dated September 8, 2003, published in the *Daily News*, which discusses the petitioner's role as organizer of the 3rd Annual International Moon Festival, which references the petitioner's desire to invite a large diversity of ethnic groups to participate in the event.
- An article dated June 26, 2003, published in the *Daily News*, which discusses the petitioner's sponsorship of an Independence Week Festival.
- A proclamation issued by the Mayor of the City of New York proclaiming February 1, 2003 "Lunar New Year Day."
- A proclamation issued by the New York City counsel on January 24, 2003, honoring the Flushing Chinese Business Association "for its extraordinary contribution to the city and the community."
- Evidence of the beneficiary's educational credentials, which include a bachelor's degree in music with a concentration in singing from a Chinese university.
- A copy of a certificate for an award received by the beneficiary in China in 1995 as "Winner of the Hubei Radio and Television Popular Songs Competition, with Second Class."
- A copy of a certificate for an award received by the beneficiary in China in 1986 as "Winner of the First Section of City Television and Radio/Music Songs Competition with Third Class."
- A certificate of award for "Successful Performance of the Year" issued by the Jianxin Culture/Art Institute in China in 2001.
- A certificate dated July 22, 2004 from the Dadi Advanced Training College of Culture and Arts, which indicates that the beneficiary participated in an advanced training program in vocal music from December 1998 until December 1999.

- An advertisement which appears to be for a performance by the beneficiary at the "Ark" nightclub. The date and location of the performance cannot be determined, and parts of the advertisement are written in Chinese.
- Several lists of songs, mostly written in Chinese, that are notated as being songs "presented by the beneficiary in Chinese, English and Japanese." It is noted that all of the songs that are included on the translated list are all familiar Western compositions, such as "Love Me Tender" and "Unchained Melody." The song lists were not accompanied by any explanation from the petitioner, and it is unknown whether these were submitted as a sample of songs she has performed in the past and/or songs she would perform while in the United States.

The director found the evidence insufficient to establish that the beneficiary's performances would be culturally unique. On March 10, 2006, the director issued a request for additional evidence (RFE). The director requested, in part, that the petitioner submit affidavits, testimonials or letters from recognized experts, attesting to the authenticity and excellence of the beneficiary's skills in performing or presenting the unique or traditional art form. The director also requested a complete description of engagements, itineraries and contracts to establish that the beneficiary is coming to the United States to participate in an entertainment event or engagement.

In response to the request for evidence, the petitioner submitted a letter dated March 3, 2006 which essentially reiterated the information provided in the petitioner's previous letter. The petitioner also submitted the following evidence:

- A letter dated March 1, 2006 from [REDACTED] President/Artistic Director of the [REDACTED] Dance Theater, Inc. of New York, New York. The letter is essentially identical in content to the petitioner's letter dated March 3, 2006. [REDACTED] added that "we believe [the beneficiary] successful in her professional career. Her talent should be shared and enjoyed by people of the community for this culture world." Ms. [REDACTED] did not provide her credentials or the basis of her knowledge of the beneficiary's skills or recognition. Moreover, the near-verbatim repetition of entire paragraphs in the letters of the petitioner and [REDACTED] indicates that the language of the letter is not the author's own and further detracts from its probative value.
- A "letter of recommendation" dated February 2, 2006 from [REDACTED] who is identified as a Dean and Professor of the National Music Department of the Shanghai Institute of Music and Conductor of the Shanghai National Music Orchestra in China. The letter is not on letterhead and is written in English. [REDACTED] describes the beneficiary as a "newly rising music star," that the applicant is a former student of hers, and that she worked with the beneficiary in the Shanghai National Music Orchestra and Symphony Orchestra of Shanghai Ballet. [REDACTED] attested to the beneficiary's "excellent ability in singing," and stated that, if able to work in the United States, "she could combine Chinese music and western music together and devote her music talent to people of the world."

On July 31, 2006, the petitioner submitted additional evidence related to its involvement in the 6th Annual International Moon Festival to be held in Flushing, New York on September 30 and October 1, 2006. The event schedule indicates that the festival will include a kite show, a fantasy parade, a 90-minute multicultural performance, a fireworks display and a street fair. This evidence included a letter from a member of the New York State Assembly, who acknowledged that the Moon Festival "provides an important forum for Asian-Americans to share our customs and traditions with the larger community." The petitioner did not submit any other evidence in response to the director's request for "a complete description of engagements, itineraries and contracts to establish that the beneficiary is coming to the United States to participate in an entertainment event or engagement."

The director denied the petition on August 9, 2006, concluding that the petitioner had failed to provide evidence that the beneficiary's performance was culturally unique. The director acknowledged the petitioner's response to the request for evidence, but noted that the submitted evidence merely addressed the beneficiary's musical ability.

On appeal, the petitioner submits copies of previously submitted evidence, and new documentation. The new documentation include copies of photographs that appear to show the beneficiary singing, but no information is provided regarding the events or locations at which the photographs were taken, and no explanation is provided regarding the significance of this evidence. The petitioner also submits a "Certificate of Qualification" issued to the beneficiary by the Shanghai Municipal Career Qualification Career Reform Department in March 1998, which certifies that the beneficiary "is qualified as a Second Class Degree Actress, specializing in singing."

In addition, the petitioner submits the following:

- A Certificate of Appointment from "American World Exhibition," certifying that the beneficiary "has been appointed to be the Member of Judge Committee of American World Exhibition," for a duration of two years commencing on March 1, 2006.
- A Certificate of Title of Art issued to the beneficiary on November 3, 2003, which indicates that the beneficiary is "strictly examined and approved as first rank songster by the Aptitude Committee of China International Exchange Center of Art and World Chinese Culture Research Center."
- A letter dated August 3, 2006 from the president of Chinaseasons Limited, located in Hong Kong. He describes the beneficiary as a "very talented songster" and references her receipt of a singing award in 1995. He indicates that she is a "dedicated performer" and "true artist who will offer the highest level of professionalism to Hong Kong culture."

Upon review, the petitioner has not established that the beneficiary seeks to enter the United States solely to perform, teach or coach under a program that is culturally unique or that she would be engaged in performances or presentations that are culturally unique.

As a preliminary matter, although the petitioner has assigned the beneficiary the title of singer, the petitioner has not outlined any performance or event, culturally unique or otherwise, in which the beneficiary would be a performer. The petitioner was specifically requested to submit a complete description of all engagements and itineraries at which the beneficiary would perform in the United States. The only events mentioned by the petitioner include a Chinese New Year Festival and an International Moon Festival, neither of which has been shown to incorporate a culturally unique performance by the beneficiary or other entertainers as a significant component.

Furthermore, the petitioner's description of the beneficiary's duties indicates that she would be "responsible for all the preparations of singing and dancing performance and shows," "training the other singers and dancers," "preparing performance schedules," acting as a judge "of some culture competition," and "assisting the president for the preparation of the Parade and Ceremony." The petitioner did not identify the tasks that would be involved in the beneficiary's "preparations," identify any other singers and dancers to be trained, or identify any "culture competition" to be judged by the beneficiary. Absent a more detailed description of what the beneficiary would be doing in the United States and a detailed itinerary of performances, it cannot be concluded that she would be coming to the United States "solely to perform, teach, or coach as a culturally unique artist or entertainer." See Section 101(a)(15)(P)(iii)(II) of the Act. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petitioner was specifically requested to submit evidence to establish that the beneficiary's performance is culturally unique, in the form of requested affidavits, testimonials, or letters from recognized experts, as specified in the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A). The letters from [REDACTED] significantly short of meeting this evidentiary burden. Both individuals acknowledged that the beneficiary is a talented singer, but neither referenced any culturally unique aspects of her performance. The petitioner provided no other explanation or documentation regarding the purported cultural uniqueness of the beneficiary's performance. Rather, the list of songs performed by the beneficiary submitted with the initial petition suggests she sings popular songs that were written in the English language, as opposed to performing music that is unique to the traditions of her Chinese culture. Other than evidence of the beneficiary's education and two awards she received in 1986 and 1995, there is no evidence regarding the beneficiary's career as a singer, such as a resume or reviews of her prior performances, that would lead to a determination that her performances are culturally unique.

In summary, the statute requires that the beneficiary enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the petitioner submitted the required consultation from an appropriate labor organization. The regulation at 8 C.F.R. § 214.2(p)(7)(v) states that the consultation should "evaluate

the cultural uniqueness of the alien's skills, state whether the events are cultural in nature, and whether the event or activity is appropriate for P-3 classification." Here, the petitioner failed to submit the required consultation with either the initial petition or in response to the request for evidence. The petitioner has not addressed this issue on appeal. Accordingly, the appeal will be dismissed for this additional reason.

The petition will be denied and the appeal dismissed 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.