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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 239 54045 Office: NEBRASKA SERVICE CENTER Date: APR 12 2004

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and a subsequent untimely appeal was rejected. The director treated the untimely appeal as a motion to reopen or reconsider, which was denied. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Serbian restaurant and cultural club. The beneficiaries are members of a Serbian folk music group that is currently comprised of three members. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking a continuation of 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) for a six-month period.

The director denied the petition, finding that the petitioner failed to establish that the performances for the petitioner would be culturally unique and that the beneficiaries are culturally unique performers.

On appeal, counsel for the petitioner asserts that the director abused his discretion and his decision was arbitrary and capricious. Counsel further indicated that he would submit a brief and/or additional evidence within thirty days of filing the appeal. More than six months have lapsed and nothing more has been submitted for the record.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) states:

> (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 regulation at 8 C.F.R. § 214.2(p)(6)(ii) 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 skill 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
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> (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 issue to be addressed in this proceeding is whether the petitioner established that the beneficiary qualifies for P-3 nonimmigrant classification.

On appeal, counsel for the petitioner raises three issues. Counsel for the petitioner asserts that the director abused his discretion in applying regulations pertaining to the requirements for an initial P-3 petition to a petition for an extension. Counsel asserts that there is no requirement that the petitioner submit additional evidence in support of its request for an extension of the validity of a visa petition.

The regulation at 8 C.F.R. § 214.2(p)(13) states, in pertinent part:

> *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director.

In review, the director may require supporting documentation from a petitioner requesting an extension of visa petition validity. Counsel's argument that the director abused his discretion lacks merit.

Counsel for the petitioner asserts that the director's denial was arbitrary and capricious because an identical petition was previously approved. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. *See Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). The Administrative Appeals Office is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert denied* 122 S.Ct. 51 (2001).

It is further noted that the previously filed petition was filed for the beneficiary group comprised of five members, whereas the beneficiary is currently comprised of three members.

Counsel for the petitioner asserts that the director abused his discretion by failing to find that the beneficiary's performances for the petitioner would be culturally unique.

In support of the assertion that the beneficiary's performances for the petitioner would all be culturally unique, the petitioner submitted the following evidence:

- A letter written by counsel for the petitioner stating that the petitioner "operates a restaurant that hosts traditional Yugoslavian folk cultural events and Serbian folk music concerts . . . to promote awareness and present Serbian folk culture to its patrons."

- A favorable consultation from the American Federation of Musicians stating that the beneficiary's performances were culturally unique.

- An affidavit written by Alija Dalipovic, folk musician, stating that the beneficiary is a "well-known Serbian folk music group from Romania," and that the petitioner exists for the purpose of promoting Serbian culture.

- An affidavit from Milica Milosevic, television correspondent, stating that the beneficiary is a "top folk ensemble in Yugoslavia."

Regarding the first item of evidence, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regarding the consultation, consultations are merely advisory and are not binding on CIS. 8 C.F.R. § 214.2(p)(7)(i)(D). Further, the consultation contained little explanation for the basis of its opinion. The value of Alija Dalipovic's affidavit is undermined by his inaccurate reference to the beneficiary as a folk music group from *Romania*. According to the rest of the evidence on the record, the members of the beneficiary group are from former Yugoslavia. Milica Milosevic's affidavit states that the beneficiary group is a widely known Yugoslavian folk ensemble that has sold thousands of records and have performed extensively

throughout Europe. While Milica Milosevic characterizes the beneficiary group as a folk ensemble, it is insufficient evidence to establish that the beneficiary group is culturally unique.

In the absence of corroborating evidence such as critical reviews of the beneficiary's past and prospective performances describing the cultural uniqueness of the beneficiaries' performance, the record is insufficient to establish that the beneficiaries qualify for P-3 classification.

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.