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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Dq

[redacted]

NOV 30 2009

FILE: WAC 09 800 00016 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition 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 teacher or coach coming to the United States to perform under a culturally unique program. The petitioner is self-described as a non-profit capoeira foundation. The petitioner seeks to employ the beneficiary as a capoeira master instructor for a period of three years.

The director denied the petition on December 1, 2008, concluding that the petitioner failed to submit any documentary evidence in support of the petition, and therefore failed to meet its burden to establish that the beneficiary meets the requirements for P-3 classification. In denying the petition, the director observed that the petitioner filed the petition using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system, and was therefore was required to submit all required initial evidence to the service center within seven business days.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner provides the following statement on Form I-290B, Notice of Appeal or Motion:

> The documents were submitted to the Service Center via regular first class mail on 10/01/2008. After checking the status of the case on 11/03/2008 on line, it was discovered that the system did not contain any information regarding the supplemental documents that were sent on 10/01/2008. A duplicate copy of the documents was sent via FEDEX on 11/03/2008, and the Service did receive them on 11/04/2008. Attached are copies of what was sent to the Service.

The petitioner attaches various documents in support of the appeal, including: a written consultation from the American Guild of Musical Artists, dated March 29, 2004; copies of the beneficiary's previous approval notices for P-3 classification petitions filed by other U.S. petitioners; the beneficiary's curriculum vitae; information regarding the Brazilian martial art of capoeira; and various reference letters. The petitioner also attaches a Federal Express proof of delivery receipt showing that a package mailed by the petitioner's counsel was received by the California Service Center on November 4, 2008.

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.

Finally, 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 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.

As noted above, the petition was denied based on the petitioner's failure to submit any of the initial evidence required by the regulations pertaining to P classification nonimmigrants in general and P-3 nonimmigrants in particular. *See* 8 C.F.R. §§ 214.2(p)(2)(ii) and 214.2(p)(6)(ii).

Counsel filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on October 1, 2008. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

> Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission...

The regulation at 8 C.F.R. § 103.2(b)(1) states:

> An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

> *Initial evidence*. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

The director denied the instant petition on December 1, 2008, after waiting two months for submission of the required initial evidence, which, as noted above, was due within seven business days of the date of filing. While counsel claims that she timely mailed the required supporting documentation to the service center within seven business days, counsel has provided no documentary evidence in support of this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges that documentation submitted to USCIS by petitioners and applicants is on rare occasions misrouted or otherwise not timely matched with the appropriate record of proceeding. However, the AAO finds it highly unlikely that the petitioner submitted its initial evidence in support of an electronically filed petition on two separate occasions, yet neither submission was incorporated into the record of proceeding.

Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

Even assuming, *arguendo,* that the petitioner had timely submitted the documentation provided on appeal, the AAO notes that the denial of the petition would have been within the scope of the director's discretionary authority, pursuant to 8 C.F.R. § 103.2(b)(8)(ii) The evidence submitted does not include: (1) copies of any written contracts between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed; (2) an explanation of the nature of the proposed events or activities; or (3) evidence that all of the performances or presentations will be culturally unique events. *See* 8 C.F.R. § 214.2(p)(2)(ii); 8 C.F.R. § 214.2(p)(6)(ii)(C).

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. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is summarily dismissed.