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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



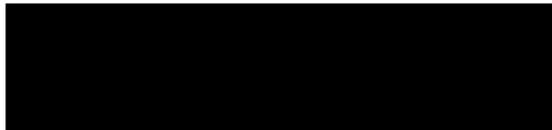
U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 800 13708 Office: CALIFORNIA SERVICE CENTER Date:

JAN 05 2010

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.

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 summarily 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 an artist in a culturally unique program. The petitioner states that it operates a Chinese dance, music and performing arts academy. The beneficiary was previously granted P-3 classification to serve in the position of Chinese music composer/teacher and the petitioner now seeks to extend his status for one additional year.

The director denied the petition based on three independent and alternative grounds, concluding that the petitioner failed to submit: (1) evidence that the beneficiary's artistic field and performances are culturally unique; (2) evidence that all of the performances or presentations will be culturally unique events; and (3) a written 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.

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, the petitioner asserts that it believed that its original support material was sufficient for the extension petition and was simply not able to gather the requested documentation in the 30-day period allowed to respond to the RFE. The petitioner requests approval of the petition based on new documentation submitted on appeal, which includes a written consultation from the American Guild of Musical Artists; a certificate of appreciation recognizing the beneficiary for a lecture on Chinese music at San Francisco State University on November 17, 2008; the preface from a book published by the beneficiary in 2002; and a list of three events at which the beneficiary and his students would be performing.

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.

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.

In addition, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by: (1) 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; (2) 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 (3) a written consultation from a labor organization.

The petitioner filed the instant petition electronically on September 5, 2008. On September 25, 2008, the petitioner submitted a "consultation and advisory opinion letter" from the Silicon Valley Chorus; a letter from Zhejiang Normal University, the beneficiary's prior employer for 37 years, describing his experience and accomplishments in Chinese music education; and (3) a copy of the beneficiary's most recent approval notice granting him P-3 status from October 6, 2007 until October 5, 2008.

The director issued a request for evidence on October 24, 2008, requesting that the petitioner submit: (1) an explanation of the nature of the events or activities in which the beneficiary will participate; (2) affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing, presenting, coaching or teaching a unique or traditional art form; (3) documentation showing that the alien's performance is culturally unique, such as reviews in newspapers or other published materials; (4) evidence that the beneficiary will be coming to the United States to participate in a cultural event; and (5) a consultation with an appropriate labor organization, specifically, the American Guild of Musical Artists. The director granted the petitioner four weeks to submit a response.

As noted above, the petitioner responded to the director's on November 24, 2008, with a request for one or two additional weeks for preparation of supporting materials. The director denied the petition on December 1, 2008.

The petitioner now attempts to submit some of the requested evidence on appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. *See* 8 C.F.R. §103.2(b)(8) . 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). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's appeal is essentially a late response to the request for evidence issued on October 24, 2008. The petitioner indicates that it did not realize that it was required to submit the supporting evidence in support of an extension request and did not have adequate time to prepare a response to the RFE. However, the petitioner has not specifically identified any erroneous conclusion of law or statement of fact on the part of the director. The director correctly concluded that the minimal evidence on record did not contain the appropriate written consultation, a schedule of performances, or evidence that the beneficiary's artistic field and performances are culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(13) provides that supporting documentation is not required in support of a request for an extension of P status with the same petitioner, unless requested by the director. As the director requested supporting documentation in this matter, the petitioner was obligated to submit it within the time period allowed. It is worth emphasizing that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If a director requests additional evidence that the petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Although the appeal will be summarily dismissed, the petitioner may, of course, file a new petition with supporting evidence without prejudice.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.