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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **MAR 29 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 entertainer coming to the United States to perform under a culturally unique program. The petitioner is self-described as a performing arts center and the beneficiary is a dancer. The petitioner seeks to employ the beneficiary for a period of one year.

The director denied the petition based on two independent and alternative grounds. Specifically, the director determined that the petitioner: (1) failed to submit a written consultation from an appropriate labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D); and (2) failed to establish that the performances of the beneficiaries will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

More specifically, the director found that the initial documentary evidence submitted in support of the petition, including a job offer letter and a reference letter, failed to provide “a detailed explanation behind the history and background of the beneficiary’s specific dance performances. . .” The director further noted that the testimonial letter “only acknowledges that the beneficiary is a dancer and does not provide further details in regards to any specific dance styles that the beneficiary has and will perform.” The director concluded that the initial documentary evidenced failed to establish that the beneficiary possesses culturally unique skills.

In addition, the director noted that an appropriate labor organization for Chinese dance artists includes the American Guild of Musical Artists (AGMA). The petitioner had asserted through counsel, in response to the director’s request for evidence (RFE) issued on June 4, 2012, that no appropriate labor organization exists in the field of Chinese dance arts.

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 submits the following statement on the Form I-290B, Notice of Appeal or Motion:

The adjudicating officer . . . denied this P3 visa petition in error.

Please note, in the initial petition, besides an expert letter, the petitioner also submitted various color photos and brochures indicating its culturally unique program and the beneficiary is a traditional Chinese Dancer. Enclosed please find some of the color brochures we already submitted for your review. . .

The petitioner indicated on Form I-290B that no additional brief or additional evidence would be submitted to the AAO.

Counsel also conceded the petitioner did not provide a consultation from AGMA, asserting, without support, that “such consultation is considered insufficient by USCIS CSC.”

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.

Further, 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.

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 regulations also require the petitioner to include a written consultation from a labor organization. See 8 C.F.R. § 214.2(p)(2)(ii)(D). The director correctly determined that the evidence submitted by the petitioner failed to meet these evidentiary requirements.

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 has not identified any erroneous conclusion of law or statement of fact on the part of the director, nor has it submitted a brief or any evidence on appeal to overcome the director's grounds for denial of the petition. The petitioner's brief statement does not address the grounds for denial, but rather appears to consist of a suggestion that the petition be approved.

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.