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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 249 51822 Office: NEBRASKA SERVICE CENTER Date: **MAY 17 2005**

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: 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner in this matter is an entertainment company, which was incorporated in 2000. The beneficiary is a group titled the [REDACTED] comprised of a lead artist and a seven-member orchestra that performs music in the [REDACTED] and [REDACTED]. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) 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 entertainers in a culturally unique program. The petitioner seeks to employ the beneficiary for a period of fifteen months.

The director denied the petition, finding that the petitioner failed to establish that the events and the group are culturally unique. The director further determined that the evidence of record indicates that the beneficiary would merely play background music for dances.

On appeal, the petitioner submits additional documentation and asserts that the beneficiary will perform traditional Gujarati songs and music, which are crucial to the celebration of the Indian Navratri festival.

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.

The first issue to be evaluated in this proceeding is whether the petitioner established that the group's performance is culturally unique.

As evidence that the beneficiary is qualified as a culturally unique performer, the petitioner initially submitted letters from the president of the [REDACTED] and the president of [REDACTED]. The letters' authors indicate that they are familiar with the beneficiary and Gujarati culture. Neither letter satisfies the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A) because they fail to establish that the authors are recognized experts and the basis for their knowledge of the beneficiary's skill. The petitioner also included a copies of two advertisements for [REDACTED]. The advertisement contains photographs of four members of the beneficiary. None of the names of the group members match those listed on the instant Form I-129.

In a request for additional evidence (RFE), the director requested that the petitioner submit 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.

In response to the RFE, the petitioner submitted a letter from the president of Care and Share USA International, which states, "[REDACTED] a well-known outstanding musical artist and represents the cultural heritage of India." The petitioner submitted photographs of Navarati festivals and additional photographs of the beneficiary together on stage. The photographs of Navarati festivals do not include the beneficiary. The photographs of the beneficiary also capture their banner, which states "[REDACTED] All types of musical programmes." One photograph is of one of the members of the beneficiary in front of a large advertisement for [REDACTED]. Another photograph is of another member of the beneficiary in front of [REDACTED] advertisements. The petitioner also submitted a banner of the beneficiary that is captioned "[REDACTED] and [REDACTED]"

In response to the RFE, the petitioner failed to submit affidavits, testimonials or letters from recognized experts attesting to the authenticity of the group's skills in performing the culturally unique art form. The petitioner failed to submit documentation that the beneficiary's performance is culturally unique in the form of reviews in newspapers, journals or other published material.

On appeal, the petitioner submitted its own letter attesting that the group is culturally unique. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submitted a letter from the president of [REDACTED] certifying that the beneficiary has performed at Navratri festivals for two consecutive years in the United

Arab Emirates (UAE). The petitioner failed to provide Citizenship and Immigration Services (CIS) with the restaurant president's credentials as required by the regulation.

On appeal, the petitioner also submitted a fill-in-the-blank affidavit. The name of the organization is illegible. The affidavit states that the affiant is the secretary of a cultural organization that states that the beneficiary has performed during the nine-day Navratri festival.

In review, the petitioner has failed to establish that the beneficiary is qualified as a culturally unique entertainment group.

The next issue raised by the director is whether the petitioner established that the beneficiary is coming to the United States to perform, teach or coach as a culturally unique artist in a culturally unique program.

The director determined that the beneficiary would be merely playing background music; therefore, the evidence failed to establish that the group and their performances are culturally unique. This portion of the director's decision will be withdrawn. Even if the record established that the beneficiary would be performing background music, this would not be determinative of whether the performance is culturally unique.

In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States in order to perform, teach, or coach as a culturally unique artist in a commercial or noncommercial program that is culturally unique.

The petitioner indicated on the Form I-129 petition that the beneficiary would "render musical performances in the Gujarati and Hindi languages in traditional and modern styles." The petitioner submitted an itinerary. The itinerary lists the dates and venues for the beneficiary's prospective performances. The petitioner also submitted copies of event contracts between the petitioner and venues. The event contracts refer to the beneficiary as a [REDACTED] orchestral musical entertainment group. This evidence is not persuasive because these contracts are not signed by both parties to each contract.

On review, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner has failed to establish that the beneficiary is coming to the United States to perform and teach as a culturally unique artist in a culturally unique program.

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.