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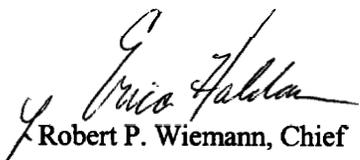
FILE: WAC 06 221 50605 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking to classify 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 performer of culturally unique Colombian music.

The director determined that the petitioner had failed to demonstrate that the beneficiary was a culturally unique entertainer that would perform under a culturally unique program in the United States. Specifically, the director found that the petitioner submitted insufficient documentation, such as reviews in newspapers, journals, or other published materials, to support a finding that the beneficiary's performance qualifies as culturally unique.

On appeal, the petitioner submits additional evidence, and claims that contrary to the director's assertions, the petitioner submitted sufficient evidence to establish that the beneficiary's performance qualifies as culturally unique. Moreover, the petitioner asserts that the director misconstrued the evidentiary requirements.

Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P), provides the terms under which an alien may seek classification as a P nonimmigrant provided the alien has a foreign residence which he or she has no intention of abandoning.

Section 101(a)(15)(P)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii), provides for classification of an alien 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)(6)(i) 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 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 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 in this proceeding is whether the petitioner established that the beneficiary seeks to enter the United States solely to perform as a culturally unique entertainer under a culturally unique program.

With the petition, the petitioner submitted a copy of the beneficiary's itinerary, copies of twelve performance agreements for appearances in the United States between August 12, 2006 and June 2, 2007, and the following documents:

- Affidavit dated June 28, 2006 by [REDACTED] President of the Foundation Our Lady of the Mercies, claiming that the beneficiary "has worked for the Foundation Our Lady of the Mercies, in artistic spectacles of great significance as a singer and pianist."
- Obituary for [REDACTED] -allegedly the mother of the applicant, dated June 28, 2006. The portion highlighted by the petitioner indicates that [REDACTED] supported "the foundation 'Las Mercedes.'"
- Affidavit dated April 19, 2006 by [REDACTED] C., Commercial Director of Club of Attorneys, claiming that the beneficiary "has celebrated musical contracts as the organizer-singer with Our Club for several years, demonstrating in his presentations fulfillment, seriousness, and a commitment in each one of his events."
- Affidavit dated April 18, 2006 by [REDACTED] General Manager of El Portal Investments, Ltd., claiming that it has maintained commercial contracts with the beneficiary for five years. Specifically, [REDACTED] claims that his organization contracted the beneficiary's services as an organizer and singer in artistic and social events in its Center of Events and Conventions Villa Santa Maria of Usaquen.
- Photocopy of CD cover and insert, indicating that the translation of the title is "The Bomb!" and claiming that the beneficiary's picture appears on the cover.

Finding the initial evidence insufficient to establish eligibility, on August 31, 2006, the director requested, among other things, that the petitioner submit:

- Evidence of authenticity of the beneficiary's culturally unique skills in the form of affidavits, testimonials, or letters from recognized experts attesting to the beneficiary's skill in performing a unique or traditional art form.
- Evidence that his performance is culturally unique in the form of reviews in newspapers, journals, or other published materials.
- Evidence that the performances will be culturally unique
- Consultation from an appropriate labor organization

In response to the director's request for additional evidence, the petitioner provided Citizenship and Immigration Services (CIS) with the following:

- Consultation dated June 30, 2006 from [REDACTED], president of the American Federation of Musicians (AFM), claiming that "the performance in question by this/these Colombian performer(s) meets the standards for cultural uniqueness, and stating that AFM has no objection to the granting of this P-3 petition.
- Photocopy of the cover of a CD recording of an international interview of the beneficiary by a French radio station.

The petitioner also resubmitted several documents previously submitted with the petition.

The director determined that the evidence in the record was insufficient to establish that the beneficiary was a culturally unique entertainer performing in culturally unique programs. Specifically, the director noted that despite his request for evidence such as reviews in newspapers, journals or other published materials, which would show the cultural uniqueness of the beneficiary's performances, the petitioner had failed to supply such documentation.

On appeal, the petitioner asserts that the director's reliance on the petitioner's failure to submit published materials as evidence of the beneficiary's cultural uniqueness was erroneous since the regulations allow either published materials *or* affidavits, testimonials, or letters from recognized experts in support of cultural uniqueness. The petitioner asserts that it complied with the latter and therefore has met its burden of proof.

Upon review, the AAO concurs with the director.

First, with regard to the consultation, it should be noted that consultations are merely advisory and are not binding on CIS. 8 C.F.R. § 214.2(p)(7)(i)(D). Further, the consultation from the American Federation of Musicians contained little explanation for the basis of its opinion and is essentially a letter of no objection. It is sufficient to satisfy the consultation requirement but does not meet the evidentiary criterion set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A). Additionally, the affidavits from [REDACTED]

[REDACTED] merely affirm that their organizations have utilized the services of the beneficiary as a performer and organizer, yet provide no specific details regarding the nature or content of these performances. While the petitioner asserts that the submission of these affidavits satisfies the petitioner's burden of proof, these documents make no mention of the beneficiary's performances and therefore cannot be accepted as evidence of the beneficiary's cultural uniqueness.

According to the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A), affidavits, testimonials, or letters from recognized experts attesting to the authenticity of an alien's skills in performing the unique or traditional art form are acceptable forms of evidence in these proceedings. However, this section also requires that these experts provide their credentials, including the basis of his or her knowledge of the alien's skill. In this matter, the affiants do not claim to be experts and, moreover, do not discuss their credentials or provide the basis for their knowledge of the beneficiary's skills. The fact that the beneficiary performed for these various organizations is insufficient evidence to establish that the beneficiary's performances are culturally unique. Finally, the photocopy of the CD covers likewise provide no evidentiary value nor do they provide any insight on the alleged cultural uniqueness of the beneficiary's performance.

In the absence of corroborating evidence such as published materials or 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 beneficiary qualifies for P-3 classification.

The evidence contained in the record is insufficient to establish that the beneficiary has been performing as a culturally unique entertainer in culturally unique programs in the past and that the beneficiary will prospectively perform in culturally unique programs. Accordingly, the petition may not 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. § 1362. Here, that burden has not been met.

ORDER: The appeal is dismissed.