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U.S. Citizenship
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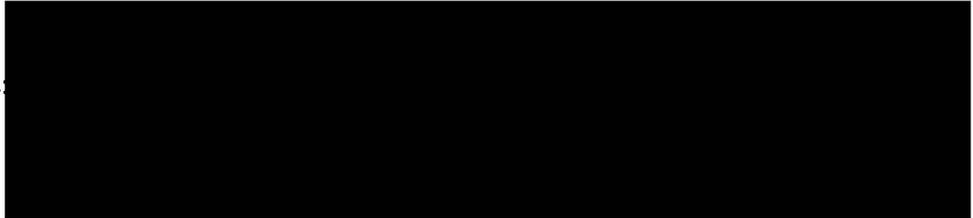
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FILE: WAC 06 800 10474 Office: CALIFORNIA SERVICE CENTER Date: **JUL 29 2008**

IN RE: Petitioner:
Beneficiaries:



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.

Robert P. Wiemann, 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 appeal will be dismissed.

The petitioner filed the nonimmigrant petition seeking classification of the beneficiaries 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 coming to perform under a culturally unique program. The petitioner states that it operates a catering business and indicates that it “occasionally acts as a music promoter.” The beneficiaries are members of Old Erivan, an Armenian folk music band. The petitioner seeks to employ the beneficiaries for a period of approximately two months.

The director denied the petition, concluding that the petitioner failed to establish that the performance of the beneficiaries is culturally unique and that all of the beneficiaries’ performances would be culturally unique events. Specifically, the director found that the petitioner failed to meet the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii).

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 asserts that the director’s decision is not supported by the evidence, and that the director “abused his discretion when he found that traditional music and folk music of Armenia were not culturally unique.” Counsel submits a brief and additional evidence in support of the appeal.

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 such an 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.

The first issue to be addressed is whether the petitioner established that the beneficiaries' performance is culturally unique.

The nonimmigrant petition was filed electronically on July 26, 2006, and the petitioner later supplemented the record with supporting documentary evidence. In a letter dated September 5, 2006, counsel for the petitioner explained that the beneficiaries form "a long established and famous music band in Armenia" which "performs traditional and folk music of Armenia." Counsel referenced the documentary requirements set forth at 8 C.F.R. 214.2(p)(2)(ii), and provided the following evidence in support of the beneficiaries' qualifications:

- A letter dated July 10, 2006 from the Embassy of the Republic of Armenia in Washington, D.C., signed by [REDACTED] whose title has not been provided. [REDACTED] names the nine beneficiaries as members of Old Erivan, and notes that they are "one of the most known and popular folk music bands in Armenia," and have "been influential in expanding the outreach of this rich music to areas outside Armenia." He further notes that the band has performed in Western and Eastern European countries. Finally, he states that "Armenian folk music is one of

the richest folk music in the world,” partly due to the long history of Armenia, and notes that “Armenian Folk music is not like any other.”

- A consultation letter dated August 31, 2006 from [REDACTED] president of the American Federation of Musicians (AFM), who states that AFM has no objection to the granting of the P-3 petition to the instant beneficiaries. [REDACTED] states that “[b]ased upon the applicable statutory and regulatory requirements, it is our opinion that the evidence presented clearly establishes that the performance in question by this/these Armenian performer(s) meets the standards for cultural uniqueness.”

The petitioner indicated that it was including copies of “assorted program materials” for the beneficiaries’ group, Old Erivan Band. The accompanying materials are all written in foreign languages and none are accompanied by an English translation. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). However, notwithstanding the petitioner’s failure to provide the required translation, it is evident that the attached documents do not refer to the beneficiaries’ nine-member group, Old Erivan. Rather the promotional materials refer to the following:

- A performance by [REDACTED]
- A performance by [REDACTED]
- Performances by a five-person ensemble known as “Goussan” which appears to include one of the beneficiaries [REDACTED]
- A performance by an ensemble known as “Veratsouna.” None of the beneficiaries are named on the program.
- A performance by a group apparently known as “Jerevan” The photograph on the flyer depicts a group of nine musicians. No individual musicians appear to be named.
- A performance by a quintet apparently known as “Armenisches Lied”

The director denied the petition on September 15, 2006. The director acknowledged the letter submitted by the Embassy of Armenia, but found that the letter failed to meet the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A) because it failed to state the credentials of the author, and the basis of his knowledge of the beneficiaries’ skills. The director also acknowledged the petitioner’s submission of the favorable consultation letter from AFM, but noted that the letter “lacks an evaluation of the uniqueness of the beneficiaries’ cultural skills.” Finally, the director noted that the petitioner submitted other materials “which have no bearing on the group being petitioned for.” The director therefore concluded that the petitioner failed to establish that the beneficiaries are performers of traditional culturally unique musical forms, specifically, that they are skilled in performing a culturally unique art form which is unique to a particular country, nation, society class, ethnicity, religion, tribe, or other group of persons.

On appeal, counsel for the petitioner asserts that the traditional music and folk music of Armenia are considered culturally unique, and that the beneficiaries have the qualification to perform such music. Among the documents submitted on appeal are encyclopedia entries describing the history and culture of

Armenia, and information regarding Armenian traditional and folk music. Counsel notes that Armenian traditional and folk music utilizes specific and unique instruments that are not used in Western music.

In support of his assertion that the beneficiaries' performance is culturally unique, counsel refers to the letter provided by the Armenian Embassy as evidence that the beneficiaries' band specializes in traditional Armenian folk music. In this regard, counsel states "[i]t is important to note that the letter from the embassy of Armenia is the official view of the government of Armenia. The government of Armenia holds the Beneficiary to be a well known band in Armenia." Counsel suggests that the director, in finding that the petitioner failed to submit evidence that the beneficiaries are skilled in performing a culturally unique art form, "usurps the decision of a sovereign country that holds otherwise." Counsel submits that the letter from the Armenian Embassy is sufficient to establish that the beneficiaries' performance is culturally unique, and supplements the record on appeal with the band's "latest CD" as further evidence that the beneficiaries have the requisite skills to perform culturally unique music.

Upon review, and for the reasons discussed herein, the petitioner has not submitted sufficient evidence to establish that the beneficiaries, as a group, are skilled in performing a culturally unique art form. The cultural uniqueness of the folk and traditional music of Armenia is not at issue. The critical issue is whether the petitioner has met the evidentiary requirements for this visa classification as set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Specifically, 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit 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.

The only evidence submitted by the petitioner in this regard is the above-referenced letter from [REDACTED] of the Embassy of Armenia. As noted, [REDACTED] listed the members of the band, noted that they specialize in traditional Armenian folk music, and stated that they are "one of the most well known Armenian folk music bands." [REDACTED] also stated that he was including promotional advertisements for the band with his letter, but none of the attached documents were accompanied by English translations. However, as noted above, it is evident that none of the documents refer to the group "Old Erivan" or otherwise refer to the nine beneficiaries as a group. Therefore, the supporting evidence did not corroborate the statements made by [REDACTED] although the attached evidence confirmed that some of the beneficiaries have performed at various venues in Europe.

While the opinion of [REDACTED] is certainly respected, counsel's argument that the director abused his discretion by not accepting the letter alone as evidence of the group's skills as culturally unique performers is without merit. Counsel does not address the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or indicate how [REDACTED] letter meets this specific requirement. As noted by the director, letter did not attest to his credentials as an expert in the beneficiaries' field or the basis of his knowledge of the group's skill. He merely stated that they are a well-known and popular band. The AAO concurs with the director that this evidence does not satisfy the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A).

The record is devoid of any evidence that could, in the alternate, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), as the petitioner has not submitted any documentation that the performance of the group is culturally unique, in the form of reviews in newspapers, journals, or other published materials.

Therefore, the AAO concurs with the director's conclusion that the petitioner's claims fail on an evidentiary basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the petitioner has established that all of the beneficiaries' performances would be culturally unique events.

At the time of filing, the petitioner submitted a contract between the petitioner and the beneficiaries' band which indicates that the group will perform in Greater Washington, DC, Boston, New York City, Detroit and Los Angeles. Article IX of the contract provides that "[t]he selection of the venue, including the city and state, is within the sole discretion of the petitioner as promoter."

The director denied the petition, concluding that the record contained no statement as to whether the proposed events are cultural in nature, whether the events or activities are appropriate for P-3 classification, or that the venue of the performances would be culturally unique events. The director found that the petitioner therefore failed to establish that the beneficiaries seek admission in order to participate solely in a commercial or noncommercial program that is culturally unique.

On appeal, counsel asserts:

The Petitioner . . . specified that it intended to petition for the Beneficiary to perform traditional and folk music of Armenia. The Petitioner also provided a background of its business which in turn demonstrates that the Petitioner promotes ethnic music particularly Armenian and Persian music. The Petitioner also provided the agreement between the Petitioner and the Beneficiary that names the venues where the Beneficiary would be scheduled to perform. The Beneficiary is coming to the US to perform culturally unique music and the Petitioner promotes ethnic music. Therefore, the venues of the performance are going to be culturally unique events.

Upon review, the petitioner has not submitted sufficient evidence to establish that all of the beneficiary's performances would be culturally unique events.

Again, the petitioner's claims fail on an evidentiary basis, as the record does not contain evidence of the specific venues or events at which the beneficiary will perform. The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) specifically requires "evidence that all of the performances or presentations will be culturally unique events." The contract submitted by the petitioner merely identifies five U.S. cities for prospective performances and implies that no venues have been chosen. There is nothing in the contract that would lead to a conclusion that the group is coming to the United States solely "to participate in a cultural event or events which will further the understanding or development of his or her art form." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel's arguments on appeal are insufficient to overcome the director's conclusion. Essentially, counsel argues that the petitioner established that it is a promoter of ethnic music and the beneficiaries are performers of culturally unique music, and therefore, it follows that their performances will be "culturally unique events." Counsel's assertions are not persuasive. 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 regulations require "[a]n 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" as well as evidence that the performances will be culturally unique events. See 8 C.F.R. § 214.2(p)(2)(ii)(C). Simply naming the cities in which the beneficiary's group will perform, without identifying the venues or cultural unique programs, is insufficient to meet this requirement.

Furthermore, there is no documentary evidence in the record to support the petitioner's claim that it is engaged in the promotion of ethnic music. Rather, the evidence in the record shows that the petitioning company is a manufacturer and retailer of gelato products.

Based on the foregoing discussion, the petitioner has failed to establish that the beneficiaries will come to the United States to participate in a cultural event or events which will further the understanding or development of its art form. 8 C.F.R. § 214.2(p)(6)(i)(B). For this additional reason, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.