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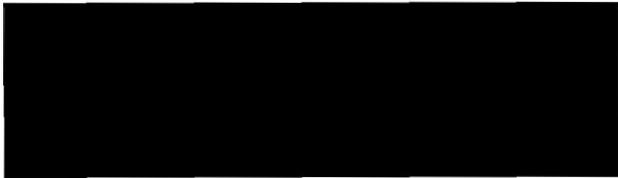
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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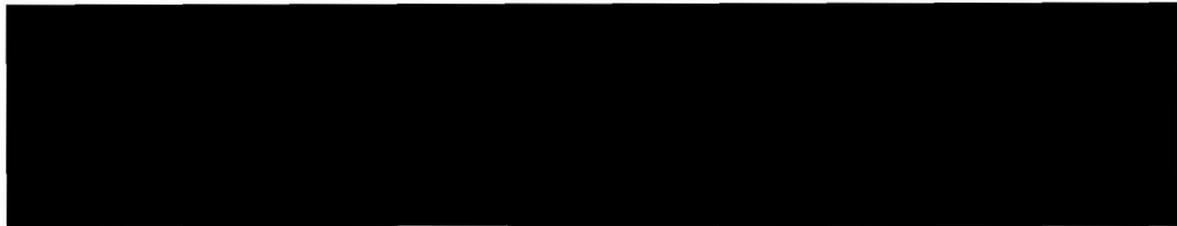
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FILE: WAC 08 800 08004 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2009

IN RE:



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.

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).

John F. Grissom  
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 dismiss the appeal.

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 the United States to perform under a culturally unique program. The petitioner is self-described as an entertainment promoter and the beneficiaries are singers. The petitioner seeks to employ the beneficiaries for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that beneficiaries' artistic field is culturally unique as defined at 8 C.F.R. 214.2(p)(3), or that they would be coming to the United States as performers under a commercial program that is culturally unique.

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 beneficiaries as a group are culturally unique and that their performances in the United States will "teach others about the unique cultural traditions of Vietnam." Counsel asserts that the petitioner's claims are substantiated by evidence, namely a consultation letter from the American Guild of Musical Artists (AGMA). Counsel asserts that the petitioner's submission of the AGMA letter "should suffice to establish the artistic field as culturally unique." Counsel submits a brief 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 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.

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 petitioner filed the nonimmigrant petition electronically on April 12, 2008 and submitted evidence in support of the petition on April 25, 2008. In a letter dated April 25, 2008, counsel for the petitioner generally described the beneficiaries as "artists and actors" and described their performances as follows:

Their performances feature a wide range that includes traditional Vietnamese music, Vietnamese Pop and Country music, Vietnamese Opera and Vietnamese Comedy sketches. The concert cannot be held unless these individuals are allowed to perform together because each person is a necessary component of the larger cultural event.

\* \* \*

The artists/performers of these events are highly regarded and recognized in the Vietnamese community of the United States. . . . [T]hese scheduled performances will bring an awareness of not only the traditional Vietnamese roots but of also the current trends of rising Vietnamese pop starts in Vietnam and in the United States. Unlike typical modern songs, traditional music performances offer the audience a unique flavor of the past through performers with their unique oratory skills. Traditional musical instruments, as introduced by members of the group herein, will stimulate and enlighten the audience so that they may develop interests in the golden era of traditional or Vietnamese folklore. . . .

As set forth above, each individual artist is an integral part of the whole group as one entity, offering the audience unique culturally entrenched experience based on their training and unique voices. The audience will be enlightened with traditional style music that mixes and meshes with the emerging popularity of the modern musical styles. This combination of each individual artist playing his or her role is therefore culturally unique.

In support of the petition, the petitioner provided a letter dated April 24, 2008 from [REDACTED] of the AGMA. [REDACTED] noted that he reviewed the draft I-129 petition and supporting documentation regarding the 18 beneficiaries and noted that the following:

The information establishes that the above-referenced artists present a unique performance representative of the cultural heritage and musical traditions of Vietnam. Based upon the applicable statutory and regulatory requirements, these artists appear to meet the standards of distinction set forth at 8 C.F.R. S 214.2{(p)}.

Accordingly, AGMA has no objection that this petition be granted.

The petitioner submitted supporting documentation for each beneficiary. For the majority of the eighteen beneficiaries, such evidence included publicity photographs and articles and/or interviews excerpted from various Vietnamese publications which appeared to be of the popular culture variety. Some of the articles contain some reference to the type of music performed by the particular individual, although many do not. For example, an article regarding beneficiary [REDACTED] mentions her “jazz and rock songs,” while [REDACTED] performs folk and pop music, and [REDACTED] performs in the techno, blues, jazz and rock styles. Beneficiary [REDACTED] is apparently the winner of a popular singing contest, and [REDACTED] evidently participated in Vietnam Idol in 2007. Beneficiary [REDACTED] “wants to conquer the teen pop and R&B music” and [REDACTED] is “training to get Latin America style” to make his sound “more exciting.” The articles indicate that [REDACTED] performs “old music” and [REDACTED] performs “songs about school, friends,” and prefers “pop ballads with romantic lyrics.” There is nothing in the documentation submitted to suggest that any of the performers have ever worked together in any capacity.

The director denied the petition on May 2, 2008, concluding that the petitioner submitted no evidence that the beneficiaries’ artistic field is culturally unique as defined at 8 C.F.R. § 214.2(p)(3). The director noted that “[t]he submitted evidence clearly reflects that [the] beneficiaries perform modern (vs. traditional) music in Vietnamese. This does not qualify them as culturally unique performers.”

On appeal, counsel for the petitioner asserts that the petitioner submitted evidence that the beneficiaries qualify as performers under a commercial program that is culturally unique. Specifically, counsel asserts:

These performers as a group are culturally unique, according to 8 C.F.R. 214.2(p)(3) because their artistic expression includes rhythms and harmonies unique to Vietnam, representing engrained traditional customs in the form of both music and dance. Many of the lyrics tell a story of the historical origins the legacy of the Vietnamese people and elucidating a nation rich in culture.

\* \* \*

These claims are substantiated by evidence stipulated by INA 101(a)(15)(P)(iii), which includes a letter from a recognized expert, the American Guild of Musical Artists, an integral entity in the music industry. The letter is testament that the artists “present a unique performance representative of the cultural heritage and musical traditions of Vietnam,” proving the authenticity of Vietnamese music. Given the credentials of the Guild, including the basis of its knowledge about the group’s skills, this should suffice to establish the artistic field as culturally unique and that they qualify as performer under a commercial program that is culturally unique pursuant to the above statutes.

Counsel asserts that the letter from AGMA satisfies the petitioner’s evidentiary requirement 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, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A).

Upon review, and for the reasons discussed herein, the petitioner has not submitted sufficient evidence to establish that the beneficiaries, individually or as a group, are skilled in performing a culturally unique art form.

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.

Contrary to counsel’s assertions, the letter from AGMA does not satisfy this evidentiary criterion. The “no objection” letter from AGMA satisfies the petitioner’s burden to submit a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D). Consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. 214.2(p)(7)(i)(D). The AGMA’s unsupported statement that the beneficiaries “present a unique performance representative of the cultural heritage and musical traditions of Vietnam,” is simply insufficient to establish that each of the eighteen beneficiaries’ performances are “unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.” It is unclear how the AGMA reached this conclusion based on the evidence submitted with the petition.

The record is devoid of any evidence that could, in the alternative, 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 beneficiaries' performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials. The petitioner has submitted articles from Vietnamese popular culture publications; however, as noted by the director, the beneficiaries all sing modern, mainstream styles of music that have not been shown to be culturally unique to Vietnam. The fact that they perform pop music in the Vietnamese language is insufficient to establish that their performances are culturally unique. If the AAO accepted this argument, all foreign singers who perform in their native language would qualify for the P-3 classification as "culturally unique" performers.

Counsel's assertions that the beneficiaries, through their performance, are capable of introducing "the golden era of traditional or Vietnamese folklore," introducing "traditional musical instruments," and the claim that each of the beneficiaries "is an integral part of the whole group . . . offering the audience unique culturally entrenched experience" are not substantiated by any documentary evidence. The beneficiaries appear to be a random assortment of well-known Vietnamese pop singers, rather than a group with experience in delivering a culturally unique performance. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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 the beneficiaries' performances in the United States would be culturally unique events.

At the time of filing, the petitioner submitted an itinerary listing 11 scheduled performances between May 2008 and May 2009. The performances are scheduled to take place at night clubs, restaurants and casinos located in California, Texas, and Virginia. There is no evidence in the record, other than counsel's assertions, that these events were organized to further the understanding of or development of a unique or traditional ethnic, folk, cultural, musical, theatrical or other art form. There is no independent evidence, such as a contract between the petitioner and the venues, which describes the culturally unique nature of the performances to be provided by the beneficiaries. Based on the evidence in the record, it is more likely than not that the beneficiaries are coming to perform modern pop songs in their native language for the entertainment of the patrons of the nightclubs and casinos at which they will perform rather than to "offer the audience a unique flavor of the past," through "oratory skills," "traditional musical instruments," or "traditional or Vietnamese folklore," as claimed by counsel. There is no evidence in the record that describes, specifically, the type of music to be performed at the scheduled concerts or how each beneficiary's performance will be culturally unique.

The petitioner's evidence in this regard consists of counsel's conclusory statements that the beneficiaries' performance is unique to the cultural heritage and traditions of Vietnam and the consultation letter from

AGMA. The petitioner has not demonstrated based on the evidence provided that the intended performances would be culturally unique.

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 their art form. 8 C.F.R. § 214.2(p)(6)(i)(B). For this additional reason, the appeal will be dismissed.

The AAO acknowledges that that at least one of the beneficiaries has previously been granted P-3 status to perform for the petitioner. It must be emphasized that 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, U.S. Citizenship and Immigration Services is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition

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.