

1 to  
UNLAWFULLY OBTAINED  
INVASION OF PERSONAL PRIVACY

PHOTOCOPY

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

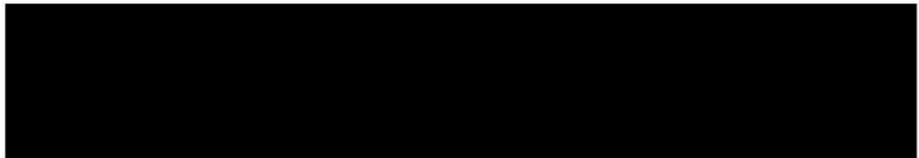


Dg

FILE: EAC 08 038 51086 Office: VERMONT SERVICE CENTER Date:

MAR 11 2009

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:

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.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).



John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 perform under a culturally unique program. The petitioner is a Macedonian Orthodox church, a non-profit religious organization. The beneficiaries are singers and musicians. The petitioner seeks to employ the beneficiaries for a period of approximately three months.

The director denied the petition, concluding that the petitioner failed to establish that the performance of the beneficiaries is culturally unique and that the beneficiaries' performances in the United States 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, the petitioner submits a revised consultation letter and additional documentation pertaining to each beneficiary. The petitioner asserts that each performer meets the standards for cultural uniqueness and requests that the petition be approved through January 2009.

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 on Janua 21, 2007, naming the four beneficiaries individually, with [REDACTED] listed first. Referring t [REDACTED] the petitioner stated in a letter dated November 19, 2007 that she recently released a CD that is "number one in Republic of Macedonia."

The petitioner submitted the following evidence in support of the beneficiaries' qualifications:

- A certificate of membership certifying that [REDACTED], a freelance performer-singer, is a full-time member of the Association of Performing Artists of Macedonia-Skopje.
- A certificate from [REDACTED] confirming that [REDACTED] participated in Folk-Fest Rosa 2006 held in January 2006.
- Photographs excerpted from [REDACTED] web site.

- A letter dated March 14, 2007 from the Union of Professional Musicians and Performers of Popular and Folk Music of the Republic of Macedonia, stating that Lidija Stojcic is a “professional musician – vocal interpreter” by vocation.
- A confirmation letter from TRD Television Station NOVA, stating that \_\_\_\_\_ is a professional musician – vocal interpreter specializing in folk music. The letter indicates that [REDACTED] has participated in folk festivals, performed folk songs on Macedonian television stations, and has recorded her own folk songs.  
A copy of a CD cover written entirely in the Macedonian language, which appears to be a CD recorded by [REDACTED].  
A certificate of membership confirming that \_\_\_\_\_ is a “freelance performer-trumpet” and full-time member of the Association of Performing Artists of Macedonia-Skopje.
- A certificate of membership confirming that [REDACTED] is a “freelance performer-singer” and full-time member of the Association of Performing Artists of Macedonia-Skopje.
- A copy of a CD cover for a work entitled “[REDACTED]” which pictures seven unidentified men.

Upon review of the above, the director issued a request for additional evidence (RFE) on November 29, 2007, in which he instructed the petitioner as follow:

If you feel the present alien or group qualifies for P-3 classification on the basis of a culturally unique program as described above, you must provide affidavits, testimonials, or letters from recognized experts, attesting to the authenticity and excellence of the alien’s or group’s skills in performing or presenting the unique or traditional art form. You must also explain the level of recognition accorded that alien or group in the native country or in another country, and give the credentials of the expert including the basis of his or her knowledge of the alien’s or group’s skill and recognition.

In a response dated December 3, 2007, the petitioner provided the following explanation as to how the beneficiaries’ performance is culturally unique:

Please be advised that the Republic of Macedonia is very small and relatively new country in Europe. Group’s performance is unique to our cultural background and heritage.

The petitioner noted that \_\_\_\_\_ and [REDACTED] have previously been granted P-3 status to perform for the church. The petitioner also provided a copy of a CD cover for a work recorded by [REDACTED]

In addition, the petitioner submitted a consultation letter from the American Guild of Variety Artists (AGVA) stating that the four beneficiaries meet the regulatory requirements for P-3 classification. Finally, the petitioner enclosed information regarding the church’s background and its folklore dance group.

The director denied the petition on December 17, 2007, concluding that the petitioner failed to establish that the beneficiaries’ performance is culturally unique. Specifically, the director found that the petitioner neither

identified nor provided information that establishes how the beneficiaries' style of artistic expression, methodology or medium is unique to Macedonia or to the religion of Macedonia. The director further noted that the petitioner failed to submit the requested reviews in newspapers, journals or other published materials demonstrating how the beneficiaries' performance is culturally unique. Finally, the director acknowledged the consultation from AVGA, but noted that the consultation does not indicate how the beneficiaries' performance is culturally unique to Macedonia.

On appeal, the petitioner provides additional information and documentation regarding each beneficiary.

With respect to [REDACTED], the petitioner states that she is the "number one singer" in Macedonia and has her own website. The petitioner submits an English translation of her "[REDACTED]" CD, and a professional biography which indicates that [REDACTED] is a "country" singer who participates in country festivals, has recorded a number of CDs, and has performed in Germany, Switzerland, Italy and Australia.

With respect to [REDACTED] the petitioner submits a professional biography which indicates that she is an "agricultural tech./country singer" who has performed at prestigious festivals in Macedonia and abroad in various European countries, Australia, and the United States. The biography indicates that [REDACTED] has recorded CDs including [REDACTED]

With respect to [REDACTED] the petitioner submits a professional biography, which indicates that the beneficiary has been a professional musician since 1985, specializing in trumpet and grand piano. According to his biography, [REDACTED] has performed in country folk music festivals, humanitarian concerts, and at the petitioner's church. He is also a member of the band "[REDACTED]" which is stated to perform "in all cultural manifestations." The resume lists various awards and recognitions, notes that [REDACTED] has recorded 200 instrumental performances on trumpet, composed twenty country folk songs, and is employed by the Macedonian Army's orchestra.

Finally, the petitioner submits a professional biography for [REDACTED] which identifies him as a musician who has performed in prestigious country festivals, received a "folk hit of the year" award at a 1997 festival, and has recorded several CDs. The petitioner submits a translation for [REDACTED] CD cover for the album titled [REDACTED]

The other documentary evidence submitted on appeal is a revised consultation letter from AGVA, dated December 25, 2007. The new consultation states the following:

As we have previously explained: AGVA believes it is quite self-evident that our opinion of "yes" would indicate clearly our opinion that the beneficiaries do meet the criteria of cultural uniqueness and that, in addition, the event is of a cultural nature as proscribed in the regulations. This union opinion of "yes" (as in this case) including the cultural nature of the event has been sufficient in thousands of similar P-3 cases which this union has rendered opinions on in the past 15 years. But if you want it spelled out "further" yes, AGVA believes that the beneficiaries exhibit performances unique to their particular cultural background & heritage, and that the

presentation of these performances are in a culturally enriching and valid context as presented by the petitioner.

The petitioner asserts that the newly submitted evidence demonstrates that each beneficiary meets the standards for cultural uniqueness.

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.

Although the director specifically requested evidence to establish that each of the beneficiaries meets this requirement, the petitioner failed to submit any affidavits, testimonials or letters from experts in response. The beneficiaries' professional biographies, CD covers, and the two AVGA consultations cannot be accepted in lieu of the evidence required by regulation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner does not address the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or indicate how the evidence submitted in support of the petition or on appeal meets this specific requirement. Therefore, 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 beneficiaries' performances are 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 the beneficiaries' performances in the United States would be culturally unique events.

At the time of filing, the petitioner submitted letters addressed to each beneficiary, indicating that they were being invited to "be present during the Christian holidays in December and January of 2008." The letter indicates the petitioner's intent to "organize a number of activities with a purpose to raise money" to be used

to fund a church and cultural center. In its letter dated November 19, 2007, the petitioner provided a list of five engagements scheduled on dates between December 19, 2007 and January 21, 2008. It stated that the “main purpose” of the beneficiaries’ visit to the United States is to “organize fund raisers/concerts during Christmas Holidays, New Years Eve and Little Christmas, etc.”

In the RFE issued on November 29, 2007, the director requested additional evidence to establish that the beneficiaries are coming to the United States to participate in a qualifying cultural event or engagement to further the understanding of or development of a unique or traditional ethnic, folk, cultural, musical, theatrical or other art form.

In its response, the petitioner noted that it is part of the Eastern Orthodox Church, and regularly holds dances and fund raisers in conjunction with holiday services. The petitioner referred to the submitted evidence regarding its dance group, and noted that the dancers are second-generation Macedonian-Americans. The petitioner stated that the “band’s performances mean a lot to them in better understanding our culture, heritage and background.” As noted above, the petitioner submitted a two-page document providing background information on the church, which featured, in part, the folklore dance group, “Makedonka.”

The director denied the petition, concluding that the record lacked evidence that all of the beneficiaries’ performances or presentations will be culturally unique events. The director noted that the petitioner provided no information indicating how the music to be performed by the beneficiaries is specific to Macedonia or otherwise culturally unique.

On appeal, the petitioner does not directly address this issue. The revised AGVA consultation states that the beneficiaries’ “presentation of these performances are in a culturally enriching and valid context as presented by the petitioner.”

Upon review, the AAO finds this evidence insufficient to overcome the director’s conclusion. There is no evidence in the record that describes, specifically, the type of music to be performed at the petitioner’s holiday concerts or how each beneficiary’s performance will be culturally unique.

The petitioner’s evidence in this regard consists of the petitioner’s conclusory statements that the beneficiaries’ “performance is unique to our cultural background and heritage,” and the consultation letter from AVGA. However, the AVGA consultation makes the assumption that the petitioner has described the “culturally enriching and valid context,” in which the beneficiaries will perform, which is not the case. Therefore, the AAO concurs with the director’s conclusions in this regard. 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 its 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 two of the beneficiaries have 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 petitions were 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.