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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



**U.S. Citizenship
and Immigration
Services**

D9

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 06 2013**

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 withdraw the decision of the director and remand the petition for a new decision.

The petitioner filed the nonimmigrant petition 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 an entertainer coming to the United States to perform under a culturally unique program. The petitioner operates a Persian restaurant and nightclub and the beneficiary is a singer of Persian music. The petitioner seeks to employ the beneficiary for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be coming to the United States to perform at events that are culturally unique. The director noted that the beneficiary "has a style and singing prowess that is culturally unique to her Iranian ethnicity," but found that the beneficiary would be performing in "culturally eclectic programs."

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 petitioner is a Persian-style restaurant and nightclub that features only Persian musical artists. Counsel contends that even assuming, *arguendo*, that not all Persian-style artists who perform at the petitioner's club are culturally unique, there is no requirement that P-3 entertainers perform at venues that host only culturally unique performers. Counsel submits that "on the nights the instant beneficiary will be performing at [the petitioner's club], the performance is culturally unique." Finally, counsel asserts that "if the beneficiary's style and prowess are culturally unique, then her performing that style and prowess amounts to a culturally unique performance."

Upon review, the AAO agrees with counsel's assertions and will withdraw the director's decision dated June 3, 2010. However, upon review of the record of proceeding in its entirety, the AAO cannot find that all requirements for the requested classification have been met. Therefore, the AAO will remand the petition to the director for further action and entry of a new decision, pursuant to the discussion below.

I. The Law

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)(3) states, in pertinent part:

Competition, event or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, and stopovers which are incidental and/or related to the activity. An athletic activity or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

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.

II. Discussion

The sole issue addressed by the director is whether the petitioner established that the beneficiary will 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. 8 C.F.R. § 214.2(p)(6)(i)(B). The regulations require the petitioner to submit evidence that all of the beneficiary's performances or presentations will be culturally unique events. 8 C.F.R. § 214.2(p)(6)(ii)(C).

The petitioner seeks to employ the beneficiary to perform as a singer at its Persian restaurant and nightclub three nights per week. The petitioner states that it operates a Persian-style nightclub and restaurant, and features "top rated Persian singers and shows which portray the rich culture and heritage of Iran." The petitioner indicates that, although its food and entertainment are "uniquely Persian," it attract patrons of all ethnicities who are "eager to understand and appreciate Persian culture and art."

The director denied the petition on June 3, 2010. The director acknowledged that "the beneficiary has a style and singing prowess that is culturally unique to her Iranian ethnicity," but determined that "the record does not demonstrate that the beneficiary will perform in events that are culturally unique." The director determined that the beneficiary would be performing in programs that are "culturally eclectic" and noted that "just because the performances will take place at a Persian restaurant does not necessarily mean that the events are culturally unique."

On appeal, counsel for the petitioner asserts that there is no requirement that P-3 entertainers perform at venues that present solely culturally unique performers. Nevertheless, counsel asserts that the petitioner is a Persian nightclub featuring Persian food served in a Persian style décor, and featuring only Persian musical artists. Counsel contends that "on the nights that the instant beneficiary will be performing at [the petitioner's club], the performance is culturally unique."

Counsel further asserts that the director's decision is contradictory, as she specifically stated that the beneficiary's style of singing is culturally unique to her Iranian ethnicity. Counsel contends that if the beneficiary's style and prowess are culturally unique, then her performing that style and prowess amounts to a culturally unique performance." Counsel emphasizes that the beneficiary "sings lyrics taken from ancient Persian poetry, performs them in a traditional Persian musical genre accompanied by instruments themselves unique to that part of the world." Counsel concludes by stating that the beneficiary's performance "represents traditional Persian ethnic music which is to be performed at a club which seeks to foster and further the appreciation of this culturally unique art form."

Upon review, the AAO agrees, in part, with counsel's assertions. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances are culturally unique, the fact that such performances would take place in a nightclub and restaurant which may not host only culturally unique artists is irrelevant. Although the statute and regulations refer to a "commercial or noncommercial program that is culturally unique," the term "program" is not defined and no specific requirements are set forth for the petitioner to establish that such a program exists. Rather, the petitioner is required to submit evidence that "all of the performances or presentations will be culturally unique events." An event is defined as an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement, and can include an entire season of performances. 8 C.F.R. § 214.2(p)(3). In this case, the beneficiary has a one-year engagement to perform in the petitioner's nightclub three times per week. The petitioner does not have to be a cultural organization or operate an overtly non-entertaining cultural program dedicated solely to the culturally unique art form.

Therefore, we conclude that the focus of the director's analysis was inappropriately based on the nature of the venue at which the beneficiary would perform, rather than based on a determination as to whether all of the beneficiary's performances would be culturally unique events.

Beyond the decision of the director, the remaining issue in this matter 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.

At the time of filing the petitioner submitted a total of four letters, two of which are from [REDACTED], the owner of [REDACTED] the beneficiary's record label. Of these four letters, only one letter mentions any culturally unique aspects of the beneficiary's performance. Specifically, Mr. [REDACTED] states in his letter dated April 14, 2010:

We at Taraneh records signed [the beneficiary] after seeing her potential, both vocally and musically. We were amazed at the fact that someone with such a modern look had so much Iranian folklore culture to offer. Aside from being able to play traditional Persian instruments like the Setar, she also has the ability to participate in a traditional Persian form of impoverished rhythmic-free singing known as [REDACTED]

After seeing all that [the beneficiary] had to offer, we knew that she was going to start a revolution for female Iranian artists. Both her first and second albums consisted of tracks that incorporate traditional Persian instruments, such as the [REDACTED] aspects. She was the first female performer in the Iranian community who combined both traditional and modern Iranian culture in her music.

This letter was submitted in response to the director's request for evidence of the authenticity of the beneficiary's culturally unique skills. Mr. [REDACTED] initial letter dated November 5, 2009 described the beneficiary as "a

renowned artist within the Persian music industry" with an extensive fanbase, but made no mention of any traditional or culturally unique aspects of her music. He noted that Taraneh records produced her first two albums and is contracted to produce and release her upcoming album.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "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." As a matter of discretion, USCIS may accept expert opinion testimony.¹ USCIS will, however, reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Here, the sole letter that mentions any culturally unique or traditional elements of the beneficiary's music is from the beneficiary's own record label and does not carry the weight that could be given to a letter from an independent recognized expert. Further, as discussed above, the letter provided by Mr. [REDACTED] at the time of filing made no mention of any culturally unique aspects of the beneficiary's music, which raises questions regarding the extent to which her music incorporates the Persian traditions mentioned in his subsequent letter. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The record does not contain sufficient evidence that could, in the alternative, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), which requires the petitioner to submit documentation that the beneficiary's performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials.

¹ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The petitioner has submitted three brief articles which establish that the beneficiary is recognized as a popular Iranian singer, but the articles do not amount to evidence that the beneficiary's performance is culturally unique.

The petition may not be approved as the petitioner has not submitted evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The AAO acknowledges that the director found that the beneficiary "has a style and singing prowess that is culturally unique to her Iranian ethnicity." As discussed above, the AAO cannot find that this conclusion is supported by the evidence of record. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Upon review of the record in its entirety, the only detailed explanations regarding the cultural uniqueness of the beneficiary's performance come from the petitioner and counsel. However, the regulations require that such statements be supported by corroborating evidence. 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)). 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 Obaighena*, 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).

At this time, the AAO takes no position on whether the beneficiary qualifies for the classification sought. By remanding this matter, the AAO does not necessarily find that the beneficiary is ineligible. Rather, we remand the matter because the director based the decision on incorrect grounds.

Therefore, the AAO will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.