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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

B9

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2010

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 dismiss the appeal.

The petitioner, a Chinese martial arts school, filed this 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 artist or entertainer in a culturally unique program. The petitioner seeks to employ the beneficiary as a martial arts instructor/coach for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary possesses culturally unique skills as an artist or entertainer or that all of her performances or presentations would be culturally unique events.

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 contends that the director erroneously concluded that Chinese "Wushu" martial arts styles are not culturally unique. Counsel further asserts that the beneficiary will be engaged "solely in training and coaching that involves culturally unique activities."

Upon review, the petitioner has not established that the beneficiary is a culturally unique artist or entertainer or that she is coming to the United States to participate in an event or events which will further the understanding or development of a culturally unique art form. The AAO further finds that the beneficiary is neither an artist nor an entertainer, but an athlete and athletic coach, and as such, her proposed activities do not fall within the plain language of the statute at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts." The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

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.

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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines "arts" as follows:

Arts includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 5, 2009. In a letter submitted in support of the petition, the petitioner stated that the beneficiary will be employed as a "Martial Arts Instructor/Coach to coach our students and for various competitions and events to be held by our organization in the Bay Area." The beneficiary is a native of China who has been formally trained in Chinese martial arts (wushu) since 1995. The petitioner has submitted evidence that the beneficiary has achieved a 5th Duan Wei, a 1st Grade Referee certificate and a 1st Grade Martial Arts Instructor certificate in China, and has several years of coaching experience. The beneficiary has also competed successfully in a number of Wushu tournaments in Nan Quan, Chang Quan, broadsword, weapons, boxing, cudgel and armed combat events.

A. Artist or Entertainer

As a preliminary matter, the AAO notes that section 101(a)(15)(P)(iii)(I) of the Act provides P-3 classification to aliens who perform as *artists or entertainers*, individually or as part of a group, or as an integral part of the performance of such a group. The term "arts" includes "fields of creative activity or endeavor" and includes, but is not limited to, fine arts, visual arts, and performing arts. *See* 8 C.F.R. § 214.2(p)(3).

Therefore, it is necessary to determine whether Wushu is a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. The petitioner stated in its letter dated September 29, 2009 that "Chinese martial artists may properly be considered artists or entertainers in certain contexts," but did not further elaborate as to how the petitioner's school is dedicated to the "arts" or how the beneficiary's services as a coach or instructor are artistic, rather than athletic, in nature, given the context of the terms and conditions of her employment.

With respect to Wushu martial arts, the petitioner stated:

Chinese martial arts, also know[n] as "Wushu", combines the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy. Considered a system of hand-to-hand combat techniques and exercises, Wushu is extremely rich in content and varied in form. Our facility is a full sized training facility of over 4,000 square feet. We teach Wushu in Shaolin, Wudang and Omei styles, Tai Chi, San So (Chinese Kickboxing), and Lion and Dragon dancing. . . . The primary focus of our organization is on teaching and training students in a

variety of Chinese martial arts styles and hand-to-hand self-defense techniques. As a Chinese martial arts school, we also strive to pass on the traditions of Chinese culture associated with martial arts, not only to its students, but also to the surrounding community.

The petitioner did not further elaborate with respect to "the traditions of Chinese culture associated with martial arts." The petitioner has emphasized that "by insisting on retaining a staff that is itself fully trained in the forms and styles of Chinese Wushu, [the petitioner] is demonstrating its belief in the cultural uniqueness of the skills that it is seeking to impart to its students."

The AAO does not doubt that the petitioner's school teaches authentic Chinese wushu styles, but it has failed to explain or demonstrate why the beneficiary should be deemed an "artist" for purposes of this classification. According to the evidence submitted, Wushu is a sport with an international governing body (the International Wushu Federation). Wushu sporting events at the world, continental, and national levels are held all over the world, and the beneficiary has been successful as a Wushu competitive athlete and as a coach of Wushu competitive athletes.

Therefore, while Wushu is a martial "art," it has not been shown to be a "field of creative activity or endeavor." It is a sport whose practitioners are recognized as athletes. The beneficiary is coming to the United States to coach students and athletes in an athletic discipline and not as an artist, performer or entertainer. As such, the AAO finds that the beneficiary is not an alien who can be classified as a P-3 artist or entertainer, and the petition cannot be approved for this reason.

B. Culturally Unique Program

Even assuming, *arguendo*, that the petitioner established that the beneficiary is an artist or entertainer as required by the statute, the AAO concurs with the director that the petitioner did not meet the evidentiary requirements for a petition involving a culturally unique program, as set forth at 8 C.F.R. § 214.2(p)(6)(ii).

Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work or other published materials. In a request for evidence ("RFE") issued on December 18, 2009, the director requested both forms of evidence, as well as evidence that the beneficiary is coming to the United States to participate in a cultural event or events that will further the understanding and development of her art form. The petitioner's evidence will be discussed below.

1. Affidavits, testimonials or letters from recognized experts

The regulation at 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 petitioner initially submitted a Wikipedia article discussing Wushu and evidence of the beneficiary's awards and certificates as evidence of the authenticity of her culturally unique skills.

In the RFE, the director instructed the petitioner to provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skill in performing or presenting the unique or traditional art form.

The petitioner submitted two letters in response to the RFE. The first letter was from [REDACTED] of [REDACTED]. [REDACTED] states that he writes "to discuss the cultural uniqueness of [the beneficiary's] activities in the field of Chinese martial arts," and notes that "[t]hese activities are clearly culturally unique, as they are NOT mainstream American culture and tradition" but rather were "originated and developed from China." [REDACTED] discusses in detail the beneficiary's career as an "athlete and competitor," coach, and "top-level martial artist in China." He also notes that the beneficiary is trained in both taolu and Tai Chi disciplines of wushu and describes these disciplines as follows:

Taolu is comprised of basic moves, patterns and maneuvers, such as kicks, punches, balances, and jumps. Tai Chi Quan arts is comprised of basic exercises, stance keeping, repetitive single movement training, linked form training, power training, weapons training, technique training and various two person exercises and drills. After extensive training, [the beneficiary] has specialized expertise in fist techniques, as well as traditional weapons techniques and skills.

[REDACTED] concludes by stating:

[The beneficiary] most certainly possesses the authentic skills in performing, presenting, coaching and teaching Chinese wushu to American students. Through her work with [the petitioner], she will foster a unique cultural tradition that will further the development of this sport in the U.S.

The petitioner also submits a letter from [REDACTED], an international-level judge [REDACTED] and [REDACTED] discusses the beneficiary's training and background as student, competitor and coach of Wushu, and states:

[The beneficiary] possesses culturally unique skills in Chinese martial arts, given her 2.5 decades career in the sport and her continued dedication to sharing her mastery of wushu. Like other martial artists before her, she is passing along a number of fighting styles and training comprised of basics, forms, applications and weapons. Besides the physical aspects, the learning and teaching of Chinese wushu by its nature incorporates the Chinese perspective, attitudes and culture. [The beneficiary] is carrying on this tradition by sharing this sport with her students in the U.S.

. . . I am pleased to conclude that [the beneficiary's] performances and coaching in the field of martial arts are authentically culturally unique and her skills in martial arts are at the top level in China.

The director found that the submitted letters were generalized in terms of describing how Chinese Wushu, and the beneficiary's specific skills in the sport, qualify as a culturally unique art form. The AAO agrees. While we do not doubt that [REDACTED] are experts in Wushu, or the beneficiary's abilities as a Wushu athlete and coach, we note that neither letter attests with any specificity to the cultural or traditional elements of the beneficiary's coaching, instruction or athletic performance. [REDACTED] makes a blanket assertion that the beneficiary possesses "culturally unique skills" because she was trained in the sport in China and because Chinese Wushu "incorporates the Chinese perspective, attitudes and culture." However, he fails to identify what makes Chinese Wushu, and the specific forms of Wushu practiced by the beneficiary, unique from the form of the sport that is practiced worldwide and governed by the International Wushu Federation. The unique cultural elements of the beneficiary's skills have not been explained with any specificity. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

[REDACTED] opines that the beneficiary's proposed martial arts training and coaching activities are "clearly culturally unique, as they are NOT mainstream American culture and tradition." There are no major martial arts forms that originated in the United States. Following [REDACTED]'s logic, any sport that originated from the traditions of another country would be considered culturally unique. Like [REDACTED], he did not attest with any specificity to what makes the beneficiary's style of Chinese Wushu culturally unique. Furthermore, the AAO notes that both [REDACTED] and [REDACTED] refer to Wushu as a "sport" rather than an "art form," which further supports the AAO's conclusion that the beneficiary is an athlete and athletic instructor rather than an artist or entertainer.

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,

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).

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.'").

While the AAO acknowledges that Wushu is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified Wushu coach and athlete trained in China is not sufficient to demonstrate her eligibility for this classification. Here, the two letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. 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).

B. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner has submitted general articles regarding Wushu from Wikipedia and other sources. However, the regulation requires the petitioner to submit evidence that the beneficiary's performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. The petitioner has not submitted any published materials that mention the beneficiary by name, and thus it has not satisfied this criterion.

C. Evidence that all of the performances or presentations will be culturally unique events

The director determined that the beneficiary's proposed performances or presentations as a martial arts coach/instructor will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

We concur with the director's conclusion. The "events" in which the beneficiary will participate are daily martial arts classes for students of various levels. She will not be "performing" or "presenting" as an artist or entertainer, and the AAO cannot conclude that a Wushu class is a culturally unique event.

On appeal, counsel for the petitioner argues that the petitioner's martial arts academy "is specifically devoted to teaching Chinese Wushu styles and forms that developed in China and retain their characteristics of cultural uniqueness." Counsel asserts that the beneficiary's "certifications and awards are ample evidence of her facility with specific styles within the Chinese Wushu tradition as it is currently practiced in China . . . and the Chinese Wushu tradition as currently practiced in China should rightly be considered to be "culturally unique" within the meaning of 8 C.F.R. § 214.2(p)(3)."

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that she will be performing "Chinese Wushu" and establishing that she was trained in the sport in China. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment event for which her services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance and the event itself are in fact unique to a particular country, nation, society, class, ethnicity, religion, tribe or identifiable group of persons with a distinct culture. 8 C.F.R. § 214.2(p)(3). Vague references to the "Chinese Wushu tradition" are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

IV. Conclusion

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that she enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

Nothing in this decision should be taken to suggest that the AAO fails to recognize the talent the beneficiary possesses as a Wushu athlete and coach. 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. § 1361. Here, that burden has not been met.

ORDER: The petition is denied.