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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

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 16 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 filed the nonimmigrant petition seeking to employ 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 in a culturally unique program. The petitioner is a Chinese cultural organization and the beneficiary is a Chinese painter and art photographer. The petitioner seeks to employ the beneficiary as its Art Photographer in Residence for a period of three years.¹

The director denied the petition on multiple grounds determining that the petitioner failed to establish that the beneficiary possesses a culturally unique style of artistic expression, that her performance is traditional or unique to one culture, or that all of her performances or presentations will be culturally unique events. The director noted that while the beneficiary is apparently a skilled and talented photographer, the petitioner did not establish how photography qualifies as a culturally unique art form. The director further found that the petitioner made material changes to the beneficiary's proposed job duties when responding to a request for evidence, and therefore excluded an "amended position" from consideration.

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 submitted evidence demonstrating that the beneficiary's photography is "like a Chinese painting," and emphasizes that "the same item could be photographed differently by different people." Counsel contends that the beneficiary is "photographing the items in a 'Chinese painting' way mak[ing] the photographing culturally unique." Counsel states that the evidence can be viewed in a different light if one accepts that "certain photography can be culturally unique." Counsel submits a brief in support of the appeal.

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

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(p)(8)(iii)(C), an approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) or (iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity or performance for which the P-2 or P-3 alien is admitted, not to exceed 1 year.

- (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, even 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. Facts

The petitioner filed the petition on August 24, 2009. In a letter dated August 20, 2009, the petitioner provided a detailed description of its organization's activities and facilities. The petitioner operates an arts center devoted to Chinese arts and cultural activities such as art exhibits of paintings and sculptures, chamber music concerts and recitals, dance performances, drama and Chinese opera shows. The organization also provides workshops, classes and clubs in Chinese performing and visual arts and other aspects of Chinese culture, as well as general classes such as mathematics, hip hop and jazz dancing, chess, voice and instrumental music. The petitioner's Chinese cultural activities are well-documented in the record.

The petitioner has offered the beneficiary the position of Art Photographer in Residence and described her proposed duties in a letter dated August 20, 2009:

[The beneficiary's] duties consist of teaching workshops on Chinese culture visual arts, providing photographic works for the Exhibition of Chinese Ethnic Minorities Culture and other photo competitions and exhibitions, and providing photography and art design for Employer's brochures and publications emphasizing Chinese culture.

The petitioner described the beneficiary's qualifications as follows:

[The beneficiary] has had more than 40 years experience in Chinese art photography. Since 1966, [the beneficiary] began studying photography, and was taught by [REDACTED] one of the best photographers in China. In the 1980s, she entered into advertising industry and has amassed

a collection of photographic works. . . . She is well-versed in Chinese culture and history, which plays an important role in her later photographic works. She is intensely interested in ethnic minorities in China, including their belief, tradition, culture and living details, which culminated in her published photography album, *Standing on Tibet*.

The petitioner noted that the beneficiary's photographic album "records the different aspects of Tibetan ethnic minorities living in Xizang, China." The petitioner provided copies of awards and certificates the beneficiary has received to confirm her achievement and ability in art photography, as well as her resume and copies of some of her published photographs. The petitioner also provided evidence that the beneficiary's Chinese paintings were selected for display at the International Artists Exhibition of the Asia Society of Arts of America in 2002, 2003 and 2005. The petitioner stated that it seeks to hire the beneficiary due to "her unique grasp of the Chinese culture through her artwork."

The director issued a request for additional evidence ("RFE") on September 28, 2009, in which she requested an explanation of the nature of the events or activities and a copy of any itinerary, as well as additional evidence of the beneficiary's culturally unique skills and evidence that all of the beneficiary's presentations will be cultural events intended to further the understanding or development of her culturally unique art form.

In a response dated October 22, 2009, counsel for the petitioner stated that the beneficiary's duties will include: (1) teaching both Chinese brush painting and Chinese art photography classes at the petitioner's arts center; (2) providing photography and art for the petitioner's upcoming festivals, performances, and tournaments; and (3) serving as president and referee of the petitioner's photo and painting competitions. The petitioner submitted documentary evidence relating to the beneficiary's participation in the organization's photography competitions, painting classes and photography classes. The petitioner also provided two articles describing the art form of Chinese brush painting.

In the notice of denial, the director emphasized that the initial evidence clearly presented the beneficiary's proposed role as a photographer, noting that the initial evidence and employment offer did not include any references to Chinese brush painting. The director determined that the petitioner was attempting to materially alter the position in an attempt to conform to USCIS requirements, and excluded the newly submitted position description.

Upon review, the AAO notes that the petitioner's initial evidence strongly suggests that the petitioner intends to hire the beneficiary first and foremost as a photographer and photography teacher. The petitioner discussed the beneficiary's credentials as a photographer at length in the initial letter of support and did not highlight her background in Chinese painting. However, the beneficiary's resume submitted at the time of filing does reference her "China elaborate style paintings" and the initial evidence included certificates of exhibition for the beneficiary's Chinese paintings. Further, the petitioner indicated that the beneficiary will teach workshops on "Chinese culture visual arts," without specifying photography. Therefore, while it appears that the petitioner may have shifted its emphasis on the beneficiary's skills in Chinese art photography to Chinese painting, we cannot

conclude that the petitioner's response to the RFE represented a material change in the beneficiary's proposed duties. Regardless, in order to establish that the beneficiary is eligible for this classification, the petitioner must establish that both Chinese art photography and Chinese painting are culturally unique art forms if it claims that the beneficiary will be engaged in both artistic disciplines. As discussed below, the petitioner has not met this burden.

III. Culturally Unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or presentation is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work. The petitioner must also provide evidence that all of the beneficiary's performances or presentations will be culturally unique events.

A. *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 has submitted a letter from [REDACTED] Artistic Director of [REDACTED] Company Inc.'s Chinese Art Center, located in Millbrae, California. [REDACTED] states that his organization "houses the largest Chinese art gallery in the Bay area and hosts and sponsors bilateral US-China cultural and art exchange activities."

[REDACTED] summarizes the beneficiary's proposed activities and concludes that all such activities are "clearly culturally unique, as they require the teaching and use of photography, painting and art design reflecting Chinese culture and tradition in line with [the petitioner's] central purpose and mission." He describes the beneficiary's skills as follows:

[The beneficiary] has an illustrious career in Chinese art photography and painting work that is based on a deep grounding in highlighting the beauty of Chinese culture, tradition, lifestyle and religions. [The beneficiary] began studying Chinese art photography since 1966, and was taught by [REDACTED] one of the best photographers in China. In the 1980s, she entered into advertising industry and has amassed a collection of photographic works. . . . She is well-versed in Chinese culture and history, which plays an important role in her later photographic works. She is intensely interested in ethnic minorities in China, including their beliefs, traditions, culture and living details, which culminated in her published photography album, *Standing on Tibet*, which records the different aspects of Tibetan ethnic minorities living in Xizang, China.

She has focused particularly on minority cultures as well as religious Buddhism or Taisim [*sic*] thought. Her photography works, such as [REDACTED] and all the works in *Standing on Tibet*, demonstrates the application of light and background colors to depict religious Chinese character. Her works contain Chinese carvings as well as ink painting elements, such as [REDACTED]

[REDACTED] goes on to providing a detailed list of the beneficiary's published photographic works and awards and recognition she has received for her art. The AAO notes that much of [REDACTED] letter closely resembles the petitioner's letter dated August 20, 2009 in content. He concludes that the beneficiary "most certainly possesses the authentic skills in presenting and teaching cultural art photography and painting to American students."

No other evidence was submitted to satisfy this criterion. The AAO notes that the plain language of the regulation requires the petitioner to submit "*affidavits, testimonials or letters from recognized experts.*" 8 C.F.R. § 214.2(p)(6)(ii)(A). As such a single letter from a Chinese art expert is insufficient to meet the petitioner's evidentiary burden.

In order to establish that the beneficiary's art photography is culturally unique, the petitioner must establish that the art form represents 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. [REDACTED] states that the beneficiary is interested in Chinese minority cultures and religions, and that her work reflects "religious Chinese character" through its use of light and background colors. No other explanation is provided regarding what, exactly, makes the beneficiary's form of artistic expression, methodology or medium culturally unique. As noted by the director, photography is not, in and of itself, a culturally unique or traditional art form. While the AAO does not doubt the beneficiary's credentials as a photographer or her interest in China's religion and subcultures, the petitioner must establish that "Chinese art photography" actually exists as a recognized style of artistic expression, methodology or medium that is distinguishable as unique within the field of art photography. [REDACTED] notes one technique utilized by the beneficiary to convey "religious Chinese character," but does not identify or associate this technique with any broader school of art photography that is distinctly Chinese. Similarly, he refers to elements of "Chinese carvings" and "ink painting elements" in the beneficiary's work, but provides no further explanation regarding these terms.

By contrast, Chinese brush painting is a recognized traditional art form, as demonstrated by the petitioner's submission of articles discussing the history of the form and the techniques used. No equivalent evidence was provided to support [REDACTED] assertions. According to the description of the Chinese Art Photography class to be taught by the beneficiary, the course will including teaching the functions of the digital camera, how to take photos of figures, how to design the composition of a photo and apply different lenses, post-processing methods of photograph reproduction, and how to evaluate photography works. While the course description mentions that the beneficiary will teach "skills to . . . make out the effect of Chinese carving paintings," this statement alone is insufficient to establish how the beneficiary's art photography is a culturally unique art form.

While counsel asserts on appeal that the beneficiary photographs her subjects in a "'Chinese painting' way," this statement is also uncorroborated by any evidence. 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).

As a matter of discretion, USCIS may accept expert opinion testimony.² 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.'"). As the AAO finds [REDACTED] letter deficient for the reasons discussed above, and 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 submitted one article about the beneficiary which was published in the August 14, 2009 issue of *World Journal*. The article discusses the beneficiary's photographic exhibit on Tibet to be held from August 15 to August 22, 2009 in San Francisco, and mentions that the beneficiary has decided to sell her exhibits at half

² 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).

price and donate all proceeds to typhoon disaster relief efforts in Taiwan. The article does not document how the beneficiary's art is culturally unique. The petitioner has not submitted any critical reviews of the beneficiary's work or other published materials describing how the work is culturally unique. Accordingly, the petitioner has not submitted evidence to meet this criterion.

Therefore, the petition was properly denied 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).

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

As discussed above, the beneficiary will be teaching visual arts classes, judging photographic competitions, exhibiting her photographic work, and providing photography and design services for the petitioner. As the petitioner has not submitted evidence to establish that Chinese art photography is a culturally unique art form, the beneficiary's duties associated with presenting or teaching photography cannot be considered culturally unique. The fact that the petitioner operates a Chinese cultural organization that may sponsor culturally unique events is insufficient to establish that the beneficiary's activities are culturally unique. The petitioner has not established how judging a general photography competition or teaching a class the functions of a digital camera would qualify as cultural presentations. We note that, notwithstanding its overall focus on Chinese arts and culture, the petitioner's supporting documents show that it offers several courses with no specific Chinese cultural emphasis.

The statute requires that the beneficiary may be granted P-3 classification "solely to perform, teach, or coach as a culturally unique artist or entertainer." Section 101(a)(15)(P)(iii)(II) of the Act. The AAO concurs with the director's conclusion that the fact that the beneficiary photographs Chinese subjects does not make her photography a culturally unique art form. While we allow for the possibility that there are distinctions in methods or techniques within the art photography field that could qualify as culturally unique, the petitioner has not provided an evidentiary foundation for such a distinction in the beneficiary's work or established "Chinese art photography" as such an art form. Upon review, in every instance where the petitioner attempted to distinguish the beneficiary's performance as culturally unique, the petitioner failed to submit any evidence that would allow the AAO to evaluate the claim. 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.

IV. Conclusion

In summary, the statute requires that the beneficiary 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.

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 appeal is dismissed.