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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
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **OCT 07 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:



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.

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 sustain the appeal and approve the petition.

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 states that it operates a food service and concert promotion business. It seeks to employ the beneficiary as a [REDACTED] folk singer for a period of one year. The beneficiary was previously granted P-3 status for employment with a different U.S. petitioner.

The director denied the petition concluding that the petitioner failed to establish: (1) that it qualifies as an employer or as an agent pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(B); and (2) that the beneficiary will be performing in culturally unique events as part of a culturally unique program. Specifically, the director noted that "there is no evidence that a restaurant would be considered a culturally unique program."

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 director denied the petition based on the petitioner's failure to provide specific evidence that was neither requested in the director's request for evidence, and nor expressly required by the regulations. Counsel asserts that the petitioner will serve as the beneficiary's employer for all purposes and is not an agent as determined by the director. Counsel further contends that it was presumptuous of the director to determine that a restaurant cannot serve as the venue for a culturally unique event.

Upon review, the AAO concurs with counsel's assertions and will withdraw the director's decision dated August 28, 2009. The petition will be approved.

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.

In addition, 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, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (I) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (II) A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services of engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

II. The petitioner's role as U.S. employer or agent

The first issue to be addressed is whether the petitioner established that it is a qualifying United States employer or agent. The petitioner stated on Form I-129 that it intends to compensate the beneficiary at a rate of \$300 per performance, plus travel expenses and lodging. The petitioner indicated that the beneficiary would work at multiple locations according to the submitted itinerary.

The petitioner submitted a summary of the terms of its oral agreement with the beneficiary, which indicates that she will be paid \$300 per performance for concerts to take place in [REDACTED] and the [REDACTED] Metropolitan area during the term of the contract, and that she will perform exclusively for the petitioner. The petitioner submitted an itinerary which indicates that the beneficiary will perform at the petitioner's restaurant, at [REDACTED] in [REDACTED], and at two [REDACTED] located in [REDACTED]. The petitioner provided addresses and dates for the anticipated performances at each location.

In a letter submitted in support of the petition, the petitioner stated:

[The petitioner] is an organization in [REDACTED] that operates a food service business and promotes folk concerts featuring singers and bands from all regions of Former [REDACTED]. [The petitioner] mostly serves the [REDACTED] community in [REDACTED] and the metropolitan [REDACTED] area. [The petitioner] hosts [REDACTED] folk cultural events and concerts to promote awareness and maintain traditional [REDACTED] cultural traditions. In order to help our organization to promote awareness of [REDACTED] cultural traditions we would very much like to employ [the beneficiary] in the United States as a featured performer in a series of concerts featuring [REDACTED] folk music.

In a request for evidence ("RFE") dated July 14, 2009, the director requested additional evidence including an explanation of the nature of the events or activities, the beginning and ending dates of the events or activities and a copy of any itinerary for the events or activities.

In response, the petitioner submitted the itinerary, along with letters from the [REDACTED] which provided additional information regarding the specific [REDACTED] cultural events at which the beneficiary is scheduled to perform at each church. The petitioner also re-submitted its initial letter of support, and highlighted the passage in which it explained that it "hosts traditional [REDACTED] folk cultural events and concerts."

The director denied the petition on August 28, 2009, citing to the regulations pertaining to agents as petitioners at 8 C.F.R. § 214.2(p)(2)(iv)(E). In denying the petition, the director stated:

The record indicates the beneficiary will be performing in four locations in [REDACTED] one of which is with the petitioning entity. The petition indicates that the beneficiary will receive \$300 for each performance. However the petitioner did not give a detailed description of what the beneficiary will be doing at the other 3 locations or whether the beneficiary will receive additional compensation for those venues. The record does not clearly indicate that the petitioner will be the only employer.

The petitioner has not demonstrated that it is the only employer for the time period in which the beneficiary will work in the United States and is, therefore, not qualified as an agent to petition for the entire period of time the beneficiary will be in the United States.

On appeal, counsel for the petitioner asserts that the RFE issued by the director failed to adequately address any concerns the director had regarding this issue. Nevertheless, counsel asserts that the petitioner established that it "is an employer and not an agent," based on its statements in the supporting letter, and based on the terms of its oral contract with the beneficiary.

Upon review, the AAO concurs with counsel that the evidence submitted establishes that the petitioner will serve as the beneficiary's employer. The summary of the terms of the beneficiary's agreement with the petitioner indicates that she will be paid exclusively by the petitioner for her performances and that such performances will

take place at multiple locations. Even if it were appropriate to deem the petitioner as an agent based on the multiple locations planned for the beneficiary's performances, the regulations at 8 C.F.R. § 214.2(p)(2)(iv)(E)(1) would be applicable to the facts of this case. These regulations provide that an agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries, and must provide an itinerary of definite employment. The petitioner has complied with these requirements.

III. Culturally Unique Events

The second issue in this matter is whether the petitioner established that the beneficiary's performances will be culturally unique events and whether the beneficiary is coming to the United States to perform under a commercial or noncommercial program that is culturally unique. See 8 C.F.R. § 214.2(p)(6)(ii)(C); 101(a)(15)(P)(iii)(II) of the Act.

As noted above, the petitioner stated that it will be hosting and sponsoring a series of concerts featuring folk music. Among the beneficiary's planned events are performances at festivals held by local , which feature traditional folk music, food and dances, as well as performances at two restaurants that serve the Balkan community in . The director did not question the beneficiary's qualifications as a culturally unique performer and the AAO notes that the petitioner submitted sufficient published evidence of the beneficiary's culturally unique art form to satisfy the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(B).

In denying the petition, the director stated:

The plain language of the regulations is clear in this matter. In order to qualify for P-3 classification, a beneficiary classified as culturally unique can only be engaged in performances and presentations that satisfy the definition of a culturally unique event. The location/venue is inconsistent with the requirement for the classification which states that the beneficiary must be participating in a "program that is culturally unique." There is no evidence that a restaurant could be considered a culturally unique program.

The petitioner did not furnish a detailed description of the various venues/locations, the nature of the population it serves, or the role that singing takes in that program. Absent a comprehensive detailed description of the beneficiary's duties and the program in which she would be employed, it cannot be concluded that the alien artist would be employed in a culturally unique program.

On appeal, counsel objects to the director's findings and contends that the director abused her discretion by presuming that a culturally unique event could not be held in a restaurant. Counsel asserts that restaurants are frequently hosts to culturally unique performers such as belly dancers, mariachi singers and folk singers.

Upon review, the AAO will withdraw the director's determination. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances are culturally unique, the

fact that some of her performances would take place in a restaurant 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's contract with the petitioner can be considered the "entertainment event or engagement." The petitioner does not have to be a cultural organization or operate an overtly cultural program dedicated solely to the culturally unique art form. The petitioner has met its burden to establish that the beneficiary is a culturally unique performer and that the intended performances will qualify as culturally unique events.

IV. Conclusion

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 been met. Accordingly, the AAO will withdraw the director's decision and approve the petition.

ORDER: The petition is approved.