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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 22 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: SELF-REPRESENTED

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 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 for a period of approximately 11 months. The petitioner is an artist representative and the beneficiary is a singer and musician.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be coming to the United States as an entertainer or performer to participate in a cultural event which will further the understanding or development of his art form. In denying the petition, the director, noting the types of venues at which the beneficiary would perform, observed that the beneficiary's performances would be for "entertainment purposes," rather than 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, the petitioner asserts that it submitted sufficient evidence to establish that the beneficiary will perform at cultural events. The petitioner notes that it has represented other artists in the past who have been granted P-3 classification under similar circumstances.

Upon review, the AAO disagrees with the director's reasoning and will withdraw the director's decision dated April 17, 2009. 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, 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. 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 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 beneficiary, as of the date of filing, had twelve performances scheduled throughout the United States between March 2009 and February 2010. The performance venues include convention centers, nightclubs, fairgrounds, and the [REDACTED]

The director denied the petition on April 17, 2009, concluding that the petitioner did not establish that the beneficiary qualifies as a performer or entertainer under a culturally unique program. In denying the petition, the director stated:

The only evidence provided about the beneficiary's planned performances is contracts and an itinerary. Both the contracts and the itinerary indicate that the beneficiary will be performing at nightclubs, fair grounds, a convention center, and the [REDACTED]. Performing at nightclubs is clearly for the purposes of entertainment, and not as a culturally unique event as required under 8 C.F.R. § 214.2(p)(6)(i)(B). In addition, it is evident that the other venues will be used simply for entertainment as well.

Upon review, the AAO disagrees with the director's reasoning. 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 nightclubs or other venues designed for "entertainment purposes" is entirely 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 and tour itinerary can be considered the "entertainment event or engagement." 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. Given that P-3 classification is specifically reserved for artists and entertainers, it is not reasonable to prohibit such beneficiaries to perform for "entertainment purposes." Cultural events and entertainment events are not mutually exclusive.

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

However, 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). 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 not submitted any evidence to satisfy this criterion.

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. The petitioner has submitted evidence such as advertisements for the beneficiary's live performances, copies of CDs recorded by the beneficiary, and several newspaper articles about the beneficiary. While the petitioner has provided evidence of the beneficiary's recognition as a popular singer in Mexico, none of these documents establish that the beneficiary's performances are culturally unique. This classification is not intended for any popular singer who sings in his or her native language. It is the petitioner's burden to establish how the beneficiary's artistic expression, methodology, or medium is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

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).

At this time, the AAO takes no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determinations on those issues. So far, the director has not done so. 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.