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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]

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FILE: [REDACTED] Office: VERMONT 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:

[REDACTED]
[REDACTED]
[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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Vermont 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 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 taekwondo demonstration team coach for a period of three years.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary is a culturally unique artist or entertainer or that the beneficiary would be performing in culturally unique events as a taekwondo coach or competitor. The director observed that "Taekwondo does not appear to qualify as being culturally unique for the purposes of the P3 classification."

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 the Korean martial art of Taekwondo is not culturally unique. Counsel asserts that there are cultural and qualitative differences between traditional taekwondo and "Americanized" taekwondo, and the petitioner seeks to have the beneficiary bring "deeper substance and understanding" to U.S. athletes. Counsel submits a brief and additional evidence in support of the appeal.

Upon review, the petitioner has not established that the beneficiary is a culturally unique artist or entertainer or that he 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, his 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 April 1, 2009. The petitioner stated that the beneficiary will be employed as its taekwondo demonstration team coach. In its offer letter to the beneficiary, the petitioner describes the proposed duties as follows:

Instruct individual and team sports to students, utilizing knowledge of Taekwondo techniques.
Plan Taekwondo programs to promote development of students' physical attributes and social skills.

The petitioner also indicated that the beneficiary would also participate as a taekwondo athlete in competitive events, and provided evidence that he competed in the [REDACTED] in February [REDACTED], where he earned a gold medal in his category.

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, but is not limited to, fine arts, visual arts, and performing arts. *See* 8 C.F.R. § 214.2(p)(3).

While taekwondo is a martial "art," it is first and foremost an Olympic sport whose practitioners are recognized as athletes. The beneficiary is coming to the United States to coach athletes, and to compete as an athlete, in athletic events, 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 April 9, 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 his 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 an unsigned and undated letter from [REDACTED] USA Taekwondo Olympic Committee, and a letter dated March 10, 2009 from [REDACTED] Federation. [REDACTED] states that he values the beneficiary's "distinguished talent in taekwondo education and training as well as positive attributes as a member of the society." He further states that the beneficiary "will be a genuine asset to the society in which he belongs and significant contribution to the community and taekwondo development." Attached to the letter was a list of the beneficiary's achievements, which include: graduation from the [REDACTED] with a major in physical education (taekwondo); a 5th Dan (black belt) in Taekwondo issued by the [REDACTED] ([REDACTED]); a 3rd class Taekwondo Instructor Certification issued by [REDACTED] a 3rd class license for life-time sports certification issued by the Korean Ministry of Culture, Sports and Tourism; and a 2nd Class Coaching Certification issued by the Ministry of Culture, Sports and Tourism. The petitioner also submitted evidence of the beneficiary's competition records, his degree certificate from [REDACTED], and his certifications.

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 director also requested that the petitioner explain how Taekwondo, and the beneficiary's skill specifically, is culturally unique.

In response to the RFE, the petitioner submitted a signed letter dated May 18, 2009 from [REDACTED] USA Taekwondo National Team Assistant Coach. [REDACTED] states:

[The beneficiary] not only possesses the physical talent to teach taekwondo, he is a proven performer who represented the best of the best as a member of the traveling Korean Demonstration team that traversed the world. He holds a 5th degree in taekwondo and is a qualified Taekwon Aerobics Instructor. [The beneficiary] also holds a prestigious 3rd Class Taekwondo Instructor Certificate issued by [REDACTED] ([REDACTED]). He honorably served his country in the army retiring as a sergeant. Furthermore, he obtained Taekwondo Coaching Certificate and 3rd Class License for [REDACTED] Sports Certification through the Korean Ministry of Culture (Sports and tourism).

[The beneficiary's] accolades speak for itself [*sic*]. [The beneficiary's] qualifications as a taekwondo instructor and coach far exceed the most of current taekwondo instructors' qualifications either in Korea and U.S.A. The U.S.A. as a country has the second most practitioners of taekwondo in the world, and the number is steadily growing. Many Americans are achieving success at the highest level including the Olympics, but the sport of taekwondo will never be same here in America as it is in Korea. The American culture due to the higher percentage of health conscious public and higher percent of working people require the sport of taekwondo to be more flexible. While taekwondo is mostly limited to kids (boys) in Korea, the taekwondo is practiced by all age groups and by both sexes in America. This trend in America requires an instructor whose skill set is not just limited to taekwondo. [The beneficiary] with his blend of taekwon aerobics, taekwondo, and life-time sports can meet the growing American interest in taekwondo not only as sport but also as a leisure activity. I believe [the beneficiary] can greatly contribute and serve the current interest in the sport of taekwondo as a competitive sport and as a fun leisure activity for all ages and sexes.

While [redacted] and Mr [redacted] speak highly of the beneficiary's talents and qualifications as a taekwondo athlete and coach, neither comments specifically upon the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional Korean art form. [redacted] letter does not attest with any specificity to the cultural or traditional elements of the beneficiary's coaching, instruction or athletic performance. He suggests that the beneficiary's qualifications are unique because of his training in taekwon aerobics and "life-time sports" in addition to taekwondo, but he fails to identify what makes Korean taekwondo unique from the form of the sport that is widely practiced in the United States and globally recognized by the International Olympic Committee. In fact [redacted] suggests that American taekwondo practitioners demand something more rigorous than traditional Korean taekwondo instruction.

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 However,

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

USCIS will 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 taekwondo is a Korean martial art, simply establishing that the beneficiary is a skilled and well-qualified taekwondo coach and athlete trained in Korea is not sufficient to demonstrate his eligibility for this classification. Here, the two letters submitted are deficient and 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 did not submit any evidence pertaining to this criterion prior to the adjudication of the petition. Therefore, the director properly concluded that the petitioner failed to establish that the beneficiary's "performance" as a taekwondo coach and athlete is culturally unique.

On appeal, counsel asserts that USCIS erroneously concluded that the Korean martial art of taekwondo is not culturally unique. Counsel asserts that "people from all over the world, including Americans, travel to Korea specifically to study and train in Taekwondo." Counsel contends that "there would be no rational basis for foreigners to study Taekwondo in Korea instead of their home countries unless there existed some cultural or qualitative differences in Taekwondo that cannot be obtained elsewhere other than in Korea."

Counsel further asserts that "there are cultural and qualitative differences in traditional Taekwondo versus 'Americanized' Taekwondo," noting that the "process of Americanization has tended to create a more superficial version of Taekwondo that, unfortunately, lacks deeper substance and understanding." Counsel claims that the petitioner "hopes to redress this by bringing someone like [the beneficiary] to the United States."

Finally, counsel asserts that the director's determination that Taekwondo is not culturally unique "seems to contravene the recent Korean Ministry of Culture, Sports and Tourism decision to officially designate September 4 as Taekwondo Day in Korea to commemorate the importance of Taekwondo to Korea's cultural heritage."

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).

In support of these assertions, counsel submits evidence from the travel website [REDACTED] indicating that the [REDACTED] offers "day programs in introductory taekwondo, the Korean martial art, for tourists in Seoul or anyone else interested." The petitioner also submits a news release regarding the announcement of "Official Taekwondo Day" by the Korean Ministry of Culture, Sports and Tourism. Such evidence does not constitute "evidence that the beneficiary's performance is culturally unique as evidenced by reviews in newspapers, journals or other published materials." 8 C.F.R. § 214.2(p)(6)(ii)(B). The submitted articles make no reference to the beneficiary.

Counsel's assertions and the newly submitted evidence are insufficient to overcome the adverse findings set forth above. The supplemental documentation submitted on appeal does not include evidence that could satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The record contains no support for counsel's assertions regarding the petitioner's desire to hire the beneficiary to teach "traditional Taekwondo" or otherwise teach a form of the sport that is culturally or qualitatively different from what is typically taught to athletes who will be competing in events under the sport's international governing rules. No such claims were made in the petitioner's statements or in the opinion letter from [REDACTED] who emphasized the value of the beneficiary's mixed background in taekwondo, aerobics and "life-time" sports, rather than the petitioner's desire to have the beneficiary teach culturally unique or "traditional" taekwondo reflecting "deeper substance and understanding." 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).

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

The director determined that neither the beneficiary's coaching position or anticipated athletic competitions in Taekwondo qualify as culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

We concur with the director's conclusion. As noted above, the "events" in which the beneficiary will actually participate actually involve a full-time athletic coaching position and competing as an athlete in taekwondo competitions. He will not be performing as an artist or entertainer, and the AAO cannot conclude that a taekwondo class or competition is a culturally unique event.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be performing "Korean taekwondo" or by stating that the beneficiary himself has a unique skill set. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment event for which his 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 traditional Korean taekwondo 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 he 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, or as an indication that he is not a highly qualified taekwondo athlete and coach. This denial does not preclude the petitioner from filing a new visa petition, supported by the required evidence, in an appropriate classification.

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.