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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: WAC 09 219 50370 Office: CALIFORNIA SERVICE CENTER Date:

SEP 17 2010

IN RE: Petitioner:
Beneficiaries:

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.

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 \$585. 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, an international entertainment production coordinator, filed this nonimmigrant petition seeking classification of the beneficiaries 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 entertainers in a culturally unique program. The petitioner seeks to employ the beneficiaries, a singer and his piano accompanist, for a period of one week.

The director denied the petition, concluding that the petitioner failed to submit evidence to establish that the beneficiaries are skilled in performing a unique or traditional art form or that their performances are culturally unique as that term is defined in the regulations. The director observed that one beneficiary is a well-known singer of classical and popular music while the other beneficiary appears to be a highly-skilled pianist with no demonstrated culturally unique skills.

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 the beneficiaries are "culturally unique Japanese artists performing classical, pop and traditional Japanese music." The petitioner further asserts that the beneficiary Masafumi Akikawa "has become a Japanese pop icon of this era," and notes that "being classical musicians who are accepted as pop musicians in Japan is rare." The petitioner submits a statement and additional documentary evidence in support of the appeal

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination that the petition failed to demonstrate that the beneficiaries are culturally unique entertainers.

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.

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.

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a request for additional evidence ("RFE") dated August 19, 2009, the petitioner's response to the RFE, the director's notice of denial dated September 3, 2009, and the petitioner's appeal. The record contains a written consultation from a labor organization, a written contract between the petitioner and beneficiary group,

and an explanation regarding the nature of the event at which the beneficiaries will perform, as required by 8 C.F.R. § 214.2(p)(2)(ii).

II. "Culturally Unique"

The sole issue on appeal is whether the petitioner established that the beneficiaries' performance is culturally unique as defined at 8 C.F.R. § 214.2(p)(3). A petitioner's claim that a beneficiary's performance is culturally unique must be supported by the evidence required by 8 C.F.R. § 214.2(p)(6)(ii).

In a letter dated August 4, 2009, the petitioner described the beneficiary [REDACTED] as "a unique and outstanding singer and talented singer of Japanese pop music attracting a wide audience." The petitioner stated that [REDACTED] his piano accompanist, will be performing a benefit concert for the 11th anniversary of the Aurora Japanese Language Scholarship Foundation, a non-profit organization established for the purpose of encouraging Japanese language teachers and students of Japanese language education. The petitioner indicated that the "culturally unique concert will be a rare opportunity for Los Angeles audiences to experience a unique form of Japan." The petitioner also provided the following biographical information regarding [REDACTED]

[REDACTED] was born in Ehime, Japan in 1967. [REDACTED] started playing the violin and the piano at the age of four, and later began learning to be a singer under the guidance of his father. He studied music under [REDACTED] at Kunitachi College of Music. After that, he spent four years studying music at Palma, Italy. In 1998, he was awarded "Best of Canzone" and also "Best of the Japanese Classic music" awards. In 2001, he made his major recording debut as the youngest tenor singer in Japan with his [REDACTED]. [REDACTED] and become a social phenomenon. He has appeared on NHK's *Kohaku Uta Gassen* three years in a row since 2006.

With respect to [REDACTED] the petitioner provided the following profile:

She started to learn piano at the age of six. She graduated from Toho Gakuen School of Music University in 2004. Her teachers include [REDACTED]. She joined the Piano Master class, which was led by [REDACTED].

She has received several famous Piano awards from numerous contests. While she was attending the Tojo Gakuen School of Music, she has been working with NHK Symphony, Tokyo Philharmonic, Hiroshima Philharmonic, and other renowned musicians in Japan. . . .

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiaries' performance is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work.

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 not submitted any evidence to fulfill this requirement. Although the director specifically requested evidence to satisfy this requirement in the RFE issued on August 19, 2009, the only letters submitted are "no objection" letters from the American Guild of Musical Artists ("AGMA") and the American Federation of Musicians ("AFM"). These letters satisfy the petitioner's burden to submit a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D) and cannot be used for the dual purpose of meeting the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). Consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. 214.2(p)(7)(i)(D).

Further, the "no objection" letters from AGMA and AFM do not constitute letters from experts attesting to the authenticity of the beneficiaries' skills in performing a unique or traditional art form. For example, the AGMA's unsupported statement that the beneficiaries "present a unique performance representative of the cultural heritage and musical traditions of Japan," is simply insufficient to establish how the beneficiaries' performances are "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." It is unclear how the AGMA reached this conclusion based on the evidence submitted with the petition. The letters do not attest with any specificity to the cultural or traditional elements of the beneficiaries' performance or the authenticity of their skills.

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 initially submitted a number of partially-translated newspaper articles with respect to [REDACTED]. An article published in the June 20, 2007 issue of *Nikkan Sports* indicates that the beneficiary is "a Japanese tenor singer who has sold more than 916,000 copies in Japan," and is "a number 1 classical musician." Another article, published in the September 26, 2007 issue of *Sankei Sports* indicated that the beneficiary and 10,000 fans intended to sing his hit song "Se No Kaze Ni Natte" together at Hibaya Park in Tokyo. A third article, published in *Sankei Sports*, indicates that [REDACTED] number one on the charts and states that the lyrics of the song "came from the poem read by a little girl after 9.11 in New York."

The petitioner also submitted: a copy of [REDACTED] awarded by the Japanese Magazine Publishers Association in 2008 to "the best entertainers in the entertainment industry"; a photograph of a plaque apparently awarded to the beneficiary for sales of 1,000,000 units of a single or album; a "Single of the Year Special Award"; and copies of two Japanese magazine covers on which the beneficiary appeared in 2007. While such evidence establishes the beneficiary's recognition as a popular artist in Japan, it is not in the form of published reviews in newspapers or journals, nor does it document how the beneficiary's performance is culturally unique. Accordingly, such evidence does not satisfy the plain language of the regulations.

With respect to [REDACTED] the petitioner submitted two photographs of her performing with a violinist, an advertisement for a "Classic Concert" featuring the beneficiary and violinist [REDACTED] and an advertisement for a concert featuring the beneficiary, a violinist and a guitarist billed as a "Guitar & Violin-Passionate Concert." The AAO notes that this evidence, while confirming [REDACTED] status as a professional classical pianist, is not in the form of published reviews and does not demonstrate how her performance is culturally unique.

In the RFE issued on August 19, 2009, the director requested additional evidence that the beneficiaries' performance is culturally unique, noting that such evidence should include reviews in newspapers, journals or other published materials. In response, the petitioner re-submitted all of the evidence discussed above, and several English-language articles regarding [REDACTED] upcoming benefit performance in Los Angeles, California. The articles include biographical information about the beneficiary and indicate that he "performs about 100 concerts a year in Japan in order to bring classical music to ordinary people." The articles discuss the success of the beneficiary's song, [REDACTED] as "a social phenomenon in Japan." According to the articles, the lyrics to the song are the Japanese translation of the American poem "Do Not Stand at My Grave and Weep." The beneficiary indicates that he feels that the benefit concert "will provide a great venue for us to express Japanese thought and feeling." None of the articles submitted in response to the RFE or at the time of filing the petition mention the second beneficiary, [REDACTED]

The director denied the petition on September 3, 2009, concluding that, while the articles submitted address [REDACTED] they establish that he is a performer of popular classical music, rather than an entertainer with culturally unique skills or performances. The director further noted that the petitioner provided no articles that reference Ms. Kuwao, and that, based on the minimal evidence submitted, it appears that she is a highly-skilled pianist with no demonstrated culturally unique skills.

Upon review, the AAO concurs with the director's determination that the evidence submitted did not satisfy the regulatory requirements at 8 C.F.R. § 214.2(p)(6)(ii)(B). The petitioner did not submit reviews or other published articles about the beneficiaries that demonstrate how their performance is culturally unique. As noted by the director, the submitted articles do not mention [REDACTED] at all. The articles establish that [REDACTED] is a prominent classically-trained singer whose popularity surged when he had a hit with the [REDACTED] [REDACTED] a song with lyrics derived from an American poem. The articles fail to illuminate the critical element - that the beneficiary's performance is culturally unique.

The regulations define "culturally unique" as 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. 8 C.F.R. § 214.2(p)(3). The petitioner bears the burden of establishing through submission of evidence that the beneficiaries' artistic expression is unique to an identifiable group of persons with a distinct culture.

The regulations do not require that an art form be "traditional" in order to qualify as culturally unique. However, the fact that the beneficiary performs classical and popular music in the Japanese language is insufficient to establish that his performances are culturally unique. If the AAO accepted this argument, all foreign singers who perform in their native language would qualify for the P-3 classification as "culturally unique" performers. The regulations require the petitioner to lay an evidentiary foundation to support its claim that the beneficiary's pop

and classical style of artistic expression is culturally unique by submitting relevant and probative evidence pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

In an attachment to the Form I-290B, Notice of Appeal or Motion, the petitioner states:

[The beneficiaries] are culturally unique Japanese artists performing classical, pop, and traditional Japanese music. The music they have performed varies from traditional Japanese songs to songs of the current Japanese era & songs of other cultures. When they perform traditional Japanese songs, those are the music every Japanese knows. Therefore, they are culturally unique. . . .

As shown on the magazine covers featuring [REDACTED] which were previously submitted to USCIS, [REDACTED] has become a cultural phenomena [*sic*] among audiences and many Japanese audiences see him as a Japanese pop icon of this era, truly having a much wider appeal than only in the classical genre. Being classical musicians who are accepted as pop musicians in Japan is rare. [REDACTED] originality and culturally unique talents bring audiences who are classical music enthusiasts together with audiences who are fond of Japanese pop music and traditional Japanese songs.

The petitioner states that it has received approvals for Japanese musicians in the past, and submits a copy of a program from the 2008 benefit concert of the Aurora Japanese Language Scholarship Foundation. The petitioner concludes by stating that it believes that Americans "who are interested in Japanese music, Japanese pop music, as well as classical music, will all enjoy" the beneficiaries' performance.

In support of the appeal, the petitioner submits: (1) [REDACTED] entry, which identifies him as a Japanese tenor singer in the opera genre who has also sung pop music; (2) [REDACTED] annotated discography; and (3) [REDACTED] information regarding recent performances by [REDACTED]. The petitioner submits no additional evidence that would satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B) and therefore has not submitted evidence that would overcome the basis for denial of the petition.

Further, the evidence submitted on appeal further confirms that the beneficiaries are classical and popular musical artists whose performances have not been shown to be culturally unique. The beneficiary's recorded music includes his original popular songs, covers of Japanese pop songs, and European classical opera songs. His versatility and popularity in different genres might be "unique" among Japanese singers, but the petitioner must establish through submission of the evidence required by regulations that the performances themselves are culturally unique. The programs for [REDACTED] performances include works by [REDACTED] whose music is not culturally unique to Japan.

The petitioner asserts for the first time on appeal that the beneficiaries perform "traditional Japanese songs. . . that every Japanese knows," but the petitioner has not submitted evidence in support of this claim. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the foregoing discussion, the AAO concurs with the director's conclusion that the petitioner has not submitted evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and therefore has not demonstrated that the beneficiaries are culturally unique performers.

III. 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 beneficiaries under this section of the Act, the petitioner must submit evidence that all of the beneficiaries' 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 petition will be denied.

The AAO acknowledges the petitioner's claim that USCIS previously approved at least one P-3 petition filed by the petitioner on behalf of a Japanese musician. While the petitioner suggests that the facts were similar in the previous matter, each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

As discussed above, the evidence in the current record fails to establish how the instant beneficiaries' form of artistic expression is culturally unique as it does not contain required evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Nothing in this decision should be taken to suggest that the AAO fails to recognize or appreciate the talent the beneficiaries possess, or as an indication that they are not highly accomplished musicians. In fact, while this appeal was pending, USCIS granted Mr. Akikawa O-1 status as an alien of distinction in the arts, which would appear to be the appropriate visa classification for an artist with his qualifications, while Ms. Kuwao was granted O-2 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.