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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

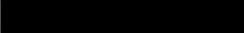


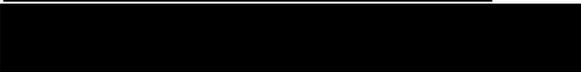
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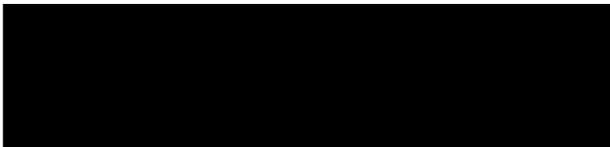
FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

SEP 30 2010

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 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. The petitioner operates a musical instruments store and music school. It seeks to employ the beneficiary as a classical Brazilian music instructor for a period of three years.¹

The director denied the petition, concluding that the petitioner failed to establish that all of the beneficiary's performances would be culturally unique events. Specifically, the director observed that the beneficiary would spend the majority of his time teaching music classes as part of the petitioner's regular instructional schedule, and that such activities do not qualify as 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, counsel for the petitioner asserts that the director erroneously determined that the music lessons taught by the beneficiary would not be "culturally unique" events. Counsel contends that the fact that the lessons will be incorporated into the petitioner's regular musical curriculum does not prohibit a finding that the lessons themselves would qualify as culturally unique. Counsel asserts that USCIS must look at the nature of the presentation rather than the schedule or the venue. The petitioner submits a statement and a proposed Brazilian music class syllabus in support of the appeal.

Upon review, the AAO agrees with counsel's assertions and will withdraw the director's decision dated April 13, 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

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(p)(8)(3)(C), an approved petition for an artist or entertainer under section 101(a)(P)(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-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, 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.

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 or her 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 petitioner seeks to employ the beneficiary as a classical Brazilian music instructor for its music school. In a letter dated October 7, 2008, the petitioner described the beneficiary's proposed position as follows:

The job we expect from [the beneficiary] is to teach, coach and perform [REDACTED]. He will be in charge of developing a schedule of classes, and activities to promote this new Musical concept at our Company. In addition, he will be responsible for networking, and representing us before other Classical Performers, Music organizations, and the community of Ventura.

In a request for additional evidence ("RFE") dated February 3, 2009, the director instructed the petitioner to "provide in detail with the beginning and ending dates for each event or activity the beneficiary will participate to perform his culturally unique musical skill, and a copy of any itinerary for the events or activities, if available."

In response, the petitioner explained that the beneficiary would be responsible for coaching, teaching and performing following a weekly schedule comprised of regular lessons held between the hours of 11:00 a.m. and 7:00 p.m., Monday through Thursday, in addition to special events held on Fridays. The petitioner indicated that during regular individual and group lessons, the beneficiary would assist the students with their "personal repertoire and technique, as well as learn about relevant aspects of the Brazilian musical culture." The petitioner noted that it had not yet promoted these classes to the public or enrolled students, but would finalize the schedule upon approval of the petition.

With respect to the special events, the petitioner stated that it will hold a series of recitals and clinics on Fridays during which the beneficiary will "perform his cultural unique musical skill." The petitioner noted that the performances would be held at its three retail locations, and may be expanded to include performances at high schools, colleges and other community events. The petitioner submitted a tentative schedule/itinerary for Friday performances for the months of February through June 2009, along with some proposed promotional materials for a "special recital & clinic: Brazilian Classical Guitar Music." The petitioner indicated that it will invest in promoting and advertising the events further upon approval of the petition.

The director denied the petition on April 13, 2009, concluding that the petitioner failed to establish that all of the beneficiary's performances or presentations will be culturally unique events. In denying the petition, the director stated:

According to the petitioner['s] statement, the majority of proposed beneficiary's job will be teaching the culturally unique Brazilian Music at the petitioner['s] location as one of the additional regular offering classes. This regular musical class does not qualify as the [sic] culturally unique events.

On appeal, counsel for the petitioner asserts:

The Service's denial was based solely on the Petitioner's statement regarding its class schedule for the music lessons, which the Petitioner referred to as being the "Regular Schedule." In its denial, the Service found that "this regular musical class does not qualify as the [sic] culturally unique events." However, in so finding the Service is misapplying the word "regular." The Petitioner was applying the term merely to the schedule of performances, not to the performances themselves, which are (as the denial itself notes) culturally unique. . . .

The fact that the beneficiary's culturally unique classes are conducted according to a regular schedule does not mean that they do not constitute culturally unique events. This is because in determining whether or not an "event" is "culturally unique," the Service must look at the nature of the presentation rather than the schedule or venue.

Counsel cites unpublished AAO decisions to stand for the proposition that the focus of USCIS' inquiry should be the nature of the performance itself. Counsel emphasizes that the beneficiary will teach only culturally unique Brazilian music classes, and, as such, "the fact that they are conducted in the context of a regular schedule is irrelevant."

The petitioner submits a declaration from the petitioner's general manager, who states that "[c]ulturally unique Brazilian music will be the subject of the all of [sic] the recitals, clinics and classes which [the beneficiary] will be teaching and performing in conjunction with his employment with [the petitioner]." The petitioner asserts that the beneficiary will not teach, perform or coach any other type of music.

In support of the appeal, the petitioner submits a Brazilian music class syllabus which is designed to ensure that students "can understand the particularities in style and technique that differentiate Brazilian guitar music from

others." The syllabus summary indicates that the classes will be focused on "the historic processes that originated the urban music in the mid-1800s and the influence that it's [sic] styles have had on the works of the greatest composers, from the 20th century to contemporary."

Upon review, the AAO agrees, in part, with counsel's assertions. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances and presentations are culturally unique, the fact that his presentations would take place as part of the petitioner's regularly scheduled instructional program 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 can be considered the "entertainment event or engagement." The petitioner does not have to be a cultural organization or operate a strictly performance-based cultural program dedicated solely to the culturally unique art form. Further, the statute and regulations explicitly include teaching a culturally unique art form as an acceptable activity for a P-3 nonimmigrant. See section 101(a)(15)(p)(iii)(II); see also § 214.2(p)(6)(i)(A). Teaching lessons in the culturally unique art form would reasonably qualify as an activity designed to further the understanding or development of his or her art form. 8 C.F.R. § 214.2(p)(6)(i)(B).

Therefore, we conclude that the focus of the director's analysis was inappropriately based on the regular or recurring nature of the beneficiary's music lessons among the petitioner's regular instructional program, rather than based on a determination as to whether all of the beneficiary's performances would be culturally unique events. Accordingly, we will withdraw the director's decision dated April 13, 2009, in which she denied the petition solely on the basis of the petitioner's failure to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(C).

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). Specifically, 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 submitted a total of three letters in support of the petition. One letter is purportedly from [REDACTED], the office manager of Melrose Gardens, an assisted living community for senior citizens. However, the letter has not been signed and as such, the statements made therein cannot be attributed to [REDACTED] and cannot be given any weight in this proceeding. Nevertheless, the AAO notes that the letter describes the beneficiary as a "unique talent" who recently performed for the community's residents. The letter states that the beneficiary's "guitar playing is superb," his audience interaction is frequent and his "style of music ranges from fast-paced and intricate to slow and soothing," with a repertoire that is "enjoyable for all ages." Finally the letter indicates that the beneficiary included a cultural aspect into an "outstanding concert" by incorporating "a short background before each piece."

The petitioner submitted a second letter from [REDACTED], activity director at [REDACTED], which is also apparently an assisted living community for seniors. [REDACTED] letter is dated June 27, 2008 and addressed to the beneficiary. [REDACTED] thanks the beneficiary for his performances on June 4 and 26 and states that the community's residents were "mesmerized by your guitar artistry." He further states that "[o]ur residents felt that your repertoire was fabulous and the way you were able to share your Brazilian culture was educational as well as unique."

Finally, the petitioner submitted a letter dated September 1, 2008 from [REDACTED], who indicates that he is an instructor at [REDACTED], where the beneficiary matriculated in F-1 status.² [REDACTED] states:

[The beneficiary] began his studies at the [REDACTED] in 2006. He already had an impressive background in classical guitar performance, theory and composition. In the 18 months I had the pleasure of working with him, he displayed the rare qualities of dedication, discipline and hard work. This led to significant improvement in a very short period of time. As a performer he has performed in guitar workshops and recitals, which have demonstrated his musical artistry and technical command along with a warm communication with the audience.

After graduating from [REDACTED], [the beneficiary] continued his studies with me privately concentrating on his roots as a classical guitarist as well as expanding into the world of jazz improvisation. It is rare to find a musician in this day and age that is as versatile and fluent in so many different styles of music. This makes him a very special musician, performer and composer.

Upon review, none of the submitted letters satisfy the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). As noted above, [REDACTED] letter is not signed and will not be given any weight in this proceeding. Even if it were signed the AAO cannot conclude that either [REDACTED] or [REDACTED], as management or administrative staff for senior assisted-living communities, are recognized experts in the field of Brazilian classical music. Although they suggested that there are cultural elements to the beneficiary's classical guitar performances, neither individual can establish their credentials as recognized experts in this area, nor do they describe with any specificity the cultural or traditional elements of the beneficiary's performance.

[REDACTED], as a college-level music instructor, is in a better position to provide an expert opinion with respect to the beneficiary's musical abilities; however, his letter fails to mention any cultural aspect to the beneficiary's performance, much less attest to the cultural authenticity of his performance. [REDACTED] mentions nothing uniquely Brazilian about the beneficiary's performance and in fact suggests that the beneficiary excels at many different styles of music. It is not evident from the content of this letter how [REDACTED] would be considered a recognized expert with respect to Brazilian classical music as he makes no reference to the field.

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

² The AAO notes that [REDACTED] letter is not on his employer's letterhead and does not include any contact information.

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." In the present case, the petitioner has not established the credentials of the purported experts or any specifics about the beneficiary's skill at performing a unique or traditional art form.

As a matter of discretion, USCIS may accept expert opinion testimony.³ However, 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.'").

Here, the three letters submitted 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).

The record as presently constituted 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 a single review of the beneficiary's EP, [REDACTED] which was published in the August 2008 issue of [REDACTED] magazine. The Brazilian magazine is also distributed in Europe and appears to cover all types of contemporary guitar music. The review states:

This guitar player from [REDACTED] currently lives in Los Angeles, where he has been perfecting his craft at the Musicians Institute and making various recordings as well as live shows. In this

³ 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).

five-song EP he registered his "classical guitar" side, displaying an already latent and versatile musicality.

Here are some of the mandatory pieces for the improvement and study to every classical guitarist in the world, as the "[REDACTED]" ([REDACTED]), the classic "[REDACTED]" (by the genius [REDACTED]) and "[REDACTED]" (by [REDACTED]). In these pieces, [the beneficiary] shows a flowing and clear technique with an expressive touch, exploring excellent tones and sounds with his guitar.

There are two little surprises: "[REDACTED]" (by [REDACTED] & [REDACTED]) and "[REDACTED]" ([REDACTED]) counting even more points to the musician[']s versatility and interpretation.

He is certainly a new name in the Brazilian music scene to stand out in the next few years.

This review does not adequately address the culturally unique nature of the beneficiary's art form. Although the review confirms that the beneficiary has recorded five songs which appear to be composed by Brazilian composers, the review states that three of the pieces are "mandatory pieces. . . for every classical guitarist in the world." The review does not adequately establish how "Brazilian classical guitar," or the beneficiary as a musician, represents a traditional or unique art form. As noted above, the regulation at 8 C.F.R. § 214.2(p)(3) defines "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. If the beneficiary is performing music that is considered part of the standard repertoire for classical guitarists worldwide, it is reasonable to determine that such music is not considered culturally unique to Brazil.

While the AAO does not discount the possibility that the beneficiary's art form is culturally unique, the AAO cannot find that a single review confirming that the beneficiary plays classical music composed by Brazilians is sufficient to meet this evidentiary requirement. 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 determination on that issue. 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.