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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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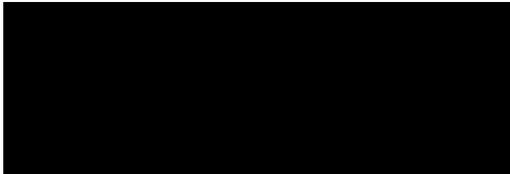
DATE: **APR 27 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 09 171 52258

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:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 to extend the beneficiaries' classification 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 artists or entertainers coming to the United States to perform under a culturally unique program. The petitioner states that it is engaged in Chinese martial arts teaching and performance. It seeks to extend the beneficiaries' P-3 status so that they may continue their employment as Martial Arts Instructors/Performers.

The director denied the petition, concluding that the petitioner failed to provide evidence to establish that all of the beneficiaries' performances or presentations would be culturally unique events as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). The director observed that the petitioner provided a vague itinerary and did not clearly explain the nature of many of the events in which the beneficiaries would perform.

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 petitioner clearly explained the nature of the beneficiaries' activities and repeatedly indicated that they will perform Chinese martial arts at all events listed in the itinerary and have no other purpose for being in the United States. Counsel emphasizes that the fact that an event is designated as a "New Years Eve Gala" or "Thanksgiving Parade" does not preclude a finding that the beneficiaries' martial arts performance at such event will be culturally unique. Counsel emphasizes that the petitioner's prior petitions on behalf of the beneficiaries were approved based on a similar itinerary of events and activities.

Upon review, the AAO agrees with counsel's arguments and will withdraw the director's decision dated April 15, 2010. 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.

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)(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.

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 beneficiaries will be coming to the United States to participate in a cultural event or events which will further the understanding or development of their art forms. 8 C.F.R. § 214.2(p)(6)(i)(B). The regulations require the petitioner to submit evidence that all of the beneficiaries' performances or presentations will be culturally unique events. 8 C.F.R. § 214.2(p)(6)(ii)(C).

The petitioner seeks to employ the beneficiaries as Chinese martial arts instructors and performers. In a letter dated May 25, 2009, the petitioner described the beneficiaries' proposed duties as follows:

[T]he Beneficiaries agree to serve as [the petitioner's] performer[s] and athlete[s] for martial arts tournaments and performance[s]; martial arts instructor[s] in Kung Fu and other self-defense techniques. They will also serve as martial arts choreographers and instructors at various exhibitions and competitions [in] which [the petitioner] will participate during the employment period.

The petitioner's employment offer letter addressed to the beneficiaries indicates that they will be teaching all levels of martial arts classes, coaching various competitions and event teams, representing the petitioner's school at various performances, demonstration events and "other coming activities."

In a request for evidence issued on September 24, 2009, the director instructed the petitioner to provide, *inter alia*: (1) evidence that the beneficiaries will be coming to the United States to participate in a cultural event or events that will further the understanding or development of their art form; and (2) specific evidence describing in detail the beneficiaries' proposed job duties. The director noted that while the petitioner indicated that the beneficiaries would be teaching and coaching, it appears that they will also be competing in events on behalf of the petitioner.

In a response dated October 28, 2009, the petitioner indicated that the beneficiaries' "detailed job duties" are as follows:

- 1). Perform and demonstrate martial arts at various events to American audience

- 2). Teach martial arts to all levels of classes, especially intermediate and advanced levels;
- 3). Coach our school's top notch martial arts teams

Specifically, they will perform martial arts at the following events and activities:

- November 7 – Dream of the Butterfly Martial Arts Performance (San Jose)
- November 28-29 – Thanksgiving Parade and Performance (San Francisco and Fremont)
- December 12 – Winter Martial Arts Showcase (San Jose)
- December 31 – New Year's Eve Gala (San Francisco)
- January 1-3 – New Year Celebration Performance (Oakland, San Jose & San Francisco)
- February 12 – Genentech Chinese New Year Celebration (South San Francisco)
- February 13 – Stanford University Chinese New Year Celebration (Palo Alto)
- February 20 – Silicon Valley Spring Festival Celebration (San Jose)
- February 28 – International Martial Arts Tournament (IntMAT) (San Jose)
- March 13 – Spring Martial Arts Showcase (Saratoga)
- April 24 – The 18th Annual UC Berkeley Chinese Martial Arts Tournament (Berkeley)
- May 2 – Festival of Silk Road (San Jose)
- May 24 – RDK's Ultimate Internationals Tournament (Santa Clara)
- June 12 – The 7th Shark City Martial Arts Nationals (San Jose)
- June 20 – Northern California Asian American Expo (San Mateo)

The record also contains the petitioner's brochure, which indicates that it offers daily martial arts classes at its three locations.

The director denied the petition on April 15, 2010, concluding that the petitioner failed to submit evidence that all of the beneficiaries' performances or presentations would be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). The director noted that "the petitioner has not provided evidence or a description relating to events such as the Thanksgiving Day performance, New Years Eve gala, New Year Celebration performance, Silicon Valley Spring Festival Celebration, and the Festival of Silk Road." The director emphasized that "all of the events that the beneficiaries intend to participate in must be considered culturally unique for the purpose of furthering the understanding of their art form." The director concluded that "absent a comprehensive description of the event taking place at each venue, it cannot be concluded that the alien artists will be strictly performing at culturally unique events for the duration of their stay."

On appeal, counsel for the petitioner notes that the director appears to have singled out the events listed on the itinerary "that did not specifically mentioned [*sic*] words such as 'martial art, Chinese Asian, or festival.'" Counsel asserts that "the record already reflects that martial arts were to be performed and demonstrated at those mentioned events," noting that "the beneficiary came to the United States as a P-3 culturally unique person to demonstrate martial arts and certainly those events that were mentioned were to demonstration [*sic*] to the public of the same." Counsel further emphasizes that prior P-3 petitions submitted on behalf of the instant beneficiaries were approved based on a similar itinerary of activities, and it is an abuse of discretion to deny the extension simply because the words "martial art," "kung fu," and "Chinese" do not appear in the designation of each event.

Finally, counsel asserts that “the government seems to be arguing that the events in and of itself must be culturally unique and should one event be not culturally unique, therefore, the entire P-3 must be void.” Counsel contends that there is no regulatory authority for this position, and that the regulations in fact “only require that the P-3 beneficiary be in America to perform work of culturally [*sic*] significance and uniqueness.”

Upon review, the AAO agrees, in part, with counsel’s assertions. The petitioner has consistently indicated that the beneficiaries will be teaching, coaching and performing Chinese martial arts and there was no basis on which to conclude that they would participate in any other types of activities while in the United States. Assuming that the petitioner establishes through submission of the required evidence that the beneficiaries’ martial arts teachings and performances are culturally unique, the fact that some performances may take place as part of an event such as a Thanksgiving parade or New Year’s Eve gala is irrelevant.

Therefore, we conclude that the focus of the director’s analysis was inappropriately based on a misunderstanding of the nature of the performances and presentations to be provided by the beneficiaries. The petitioner provided evidence that it offers martial arts classes year-round, holds, participates in martial arts tournaments, and participates in community events in which the schools’ martial arts instructors and students perform. Accordingly, the AAO will withdraw the director’s decision dated April 15, 2010, as the petitioner has overcome the sole grounds for denial.

Although the director’s decision will be withdrawn, 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.

A 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 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 submitted four letters in support of the petition. [REDACTED]

I have been familiar with [the beneficiaries] and their reputation as competitive martial artists and excellent performers. They have received formal Kung Fu training at the world-famous Shaolin Temple at Song Mountain, Henan Province, China. They are renowned martial artists who have won a number of national and international competitions, but [*sic*] most of all, I am

impressed by their advanced skills and expertise as martial arts performers. Combined with their solid education in physical education theory, they have designed very effective and beautiful martial arts feats and skills; they have performed extensively in many countries across the world.

further states that the beneficiaries' "skills and experience is a valuable resource for the development of Chinese culture in America."

president and head instructor of also submitted a letter in support of the petition. He states that the beneficiaries "are outstanding martial arts masters," and "world famous Kung Fu players and performers" who "have won many awards and honors in the field." He indicates that he has "full confidence in their ability to make significant contribution to the development of martial arts in the United States" and to "enhance the culture and the health of its people."

The petitioner submitted a letter from , president and chief instructor of in Houston, Texas. states:

The application of [the beneficiaries] was strongly supported by their outstanding contributions to the field of Chinese martial arts. I have known them at many martial arts events, competitions and other activities for many years. I personally attended several shows and performance of them. I have been very impressed with their excellent performance and extensive experience in the field of martial arts. In light of their reputation in the field, organizers of many martial arts events and competitions have invited [the beneficiaries] to serve as performers or instructors both in China and the United States.

In sum, [the beneficiaries'] contributions to the development of martial arts have been tremendous and significant. Their performance and research in the field has helped improve both the physical and mental health of our people. Overall, I feel that they are a valuable asset to the martial arts community in our country. . . .

Finally, the petitioner submitted a letter from president and chief instructor of U.S.A. Kung Fu Studio in Cupertino, California. With respect to the beneficiaries, he states:

[The beneficiaries] are world famous Kung Fu masters. They have won many awards and honors in the field. They have performed martial arts at various places both in the United States. I have been in the martial arts community for more than 15 years. [The beneficiaries'] accomplishments and contribution are far more important than many other professional masters. It is evident that his [sic] stay in the Unites [sic] State [sic] will enhance the culture and the health of its people.

further states:

Wushu is an important component of the cultural heritage of China. Beginning as an ancient Chinese form of self-defense, Wushu literally means “martial arts” and encompasses the forms popularly known in the West as Kung Fu and Tai Chi. Over the years Wushu has developed from a combat style into a dynamic performance orientated art. It emphasizes speed, balance, coordination and presentation, resulting in an athletic and aesthetically powerful competitive sport. In China, Wushu is a way of life and an integral part of Chinese culture. It is practiced by people of all ages and backgrounds for self-defense, health and mental discipline.

The petitioner also submitted several letters from the beneficiaries’ current students, praising the beneficiaries’ skills as martial arts instructors. We note that such letters are clearly not “from recognized experts,” and therefore their contents will not be addressed further.

Upon review, the above-referenced letters fail to satisfy the requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). While we do not doubt the beneficiaries’ abilities as martial artists, we note that none of the letters attests with any specificity to the cultural or traditional elements of the beneficiaries’ performances or instruction methods, or how the beneficiaries’ specific form of Chinese martial arts is “culturally unique” compared to the forms that are practiced worldwide. The letters describe the beneficiaries as “world famous” martial artists who have made “significant contributions” to the development of martial arts, without mentioning any culturally unique aspects of their performances.

We further note that, while all four authors discussed their own credentials, the petitioner failed to submit evidence to establish that they are “recognized experts” in the beneficiary’s field. The petitioner is required to “give the credentials of the expert, including the basis of his or her knowledge of the alien’s or group’s skill,” pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). All four testimonials are from presidents or coaches at U.S.-based Kung Fu schools, but no other evidence of their credentials as “recognized experts” has been provided. Further, the AAO notes that the persons providing testimonial evidence have not fully established the basis of their knowledge of the beneficiaries’ skill. [REDACTED] simply states that she has “been familiar with [the beneficiaries] and their reputation as competitive martial artist and excellent performers” and that they are “fellow martial arts performers of Chinese martial arts in San Francisco Bay Area.” [REDACTED] states that he “personally attended” the beneficiaries’ “shows and performance,” but offers no further details as to when or where these performances occurred. Similarly, [REDACTED] and [REDACTED] state that the beneficiaries are “world famous” but offer no further information as to how they know of the beneficiaries.

While [REDACTED] does offer some explanation of Wushu as “an important component of the cultural heritage of China,” he does not attest with specificity to the culturally unique skills of the instant beneficiaries’ beyond stating that they are “world famous” Kung Fu masters. Further, he fails to identify what makes Chinese Wushu, and the specific forms of Wushu practiced by the beneficiaries, unique from the form of the sport that is practiced worldwide and governed by the International Wushu Federation, the international governing body of the sport. The unique cultural elements of the beneficiary’s skills have not been explained with any specificity. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

Overall, the evidence fails to establish the manner in which the authors gained knowledge of the beneficiaries' skills, fails to establish the credentials of the authors, and fails to reference any culturally unique aspects of the beneficiary's martial arts performances.

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 USCIS will, however, 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'r. 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 Kung Fu or wushu is a Chinese martial art, simply establishing that the beneficiaries are skilled and well-qualified Kung Fu or wushu practitioners trained in China is not sufficient to demonstrate their eligibility for this classification. Here, the four letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiaries' performances. The record as presently constituted does not contain evidence to satisfy the regulations at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The record as presently constituted does not contain 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 beneficiaries' performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials. The petitioner has submitted a number articles about Chinese martial arts and Shaolin Kung Fu, along with the results of a Google search for the term "Chinese culture martial arts." With respect to the

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 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).

Google search results, we emphasize that it is the petitioner's burden to submit published materials that meet this evidentiary criterion. USCIS is not obligated to conduct a search of the Internet for evidence that might meet the petitioner's evidentiary burden. Regardless, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary or group and their individual performance of the claimed culturally unique art form. The petitioner did not submit any published materials pertaining to either of the beneficiaries.

We note that it is evident that there are significant differences between the [REDACTED] performed at the Shaolin Temple, which does appear to incorporate religious, traditional, and cultural elements, and other forms of Kung Fu performed as a sport in China and throughout the world. The information provided by the petitioner indicates that its school teaches "O-Mei kung fu," and "wushu" and does not make specific references to traditional Shaolin kung fu. The fact that all forms of Chinese martial arts originated in China does not equate to a finding that all modern Kung Fu and wushu programs continue to offer "culturally unique" activities.

The AAO acknowledges that one of the individuals who have provided testimonial evidence indicated that the beneficiaries were trained at the Shaolin Temple in China. Neither the petitioner nor counsel have made this claim, and little background information has been provided regarding the beneficiaries other than copies of awards they received at wushu and Kung Fu sporting events in China. Regardless of whether the beneficiaries are Shaolin monks, the evidence of record does not establish that they would be incorporating the traditional, religious or cultural elements of Shaolin Kung Fu in their primary role as instructors within the petitioner's curriculum. The "events" in which the beneficiaries will primarily participate are daily martial arts classes for students of various levels. The culturally unique aspects of the beneficiary's instruction and coaching responsibilities have not been discussed in the record.

Another issue that warrants further examination is whether the beneficiaries will perform as "artists or entertainers" as required by section 101(a)(15)(P)(iii)(I) of the Act. The term "arts" includes "fields of creative activity or endeavor" and includes, but is not limited to, fine arts, visual arts, and performing arts. See 8 C.F.R. § 214.2(p)(3). Therefore, it is necessary to determine whether the wushu and kung fu styles, as practiced by the beneficiaries and taught at the petitioner's academy, can be classified as a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. The petitioner indicates that each beneficiary will serve as both "performer and athlete," and it appears that they have been and will be competing in martial arts tournaments against other athletes who have been trained in the United States in the same Chinese martial arts styles. The petitioner will need to identify what makes Chinese martial arts, and the specific forms of Chinese martial arts practiced by the beneficiaries, unique from the forms or disciplines that are practiced in the United States and worldwide, and identify how the beneficiaries' disciplines meet the regulatory definition of "arts" applicable to the P classification.

At this time, the AAO takes no position on whether the beneficiaries qualify 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 beneficiaries are 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. The AAO acknowledges that USCIS has approved a prior petition granting the beneficiaries P-3 classification as culturally-unique artists or entertainers for the petitioning organization. The petitioner is advised that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). 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.