

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

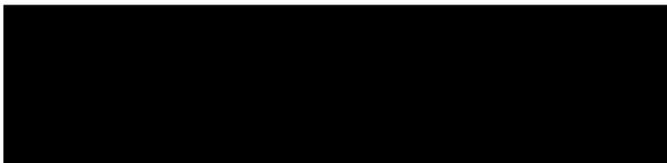
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

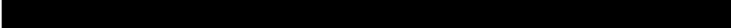


**U.S. Citizenship
and Immigration
Services**

b9

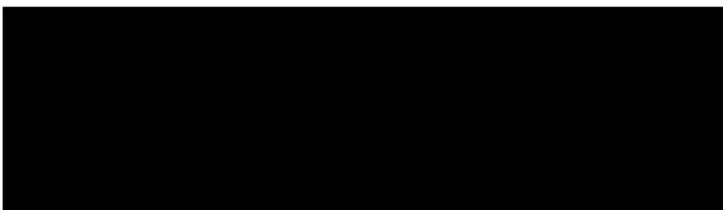


DATE: **APR 28 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 10 229 51359

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.

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 \$630. 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 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: (1) failed to provide evidence to establish that the beneficiaries possess culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B); (2) failed to establish that all of the beneficiaries' performances or presentations would be culturally unique events; and (3) failed to submit a written consultation from an appropriate labor organization. The director acknowledged that the instant petition was filed to request an extension of the beneficiaries P-3 status, but determined that it was not clear that the beneficiaries intend to continue or complete the same activity or event specified in the original petition, pursuant to 8 C.F.R. § 214.2(p)(13).

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 the evidence submitted was more than sufficient to establish that the beneficiaries possess culturally unique skills in Chinese Shaolin Kung Fu, and that they will continue to teach and perform in this field. Counsel further asserts that there is no appropriate labor organization in the field of martial arts in the United States, and that USCIS has not responded to counsel's requests for assistance in identifying the appropriate organization.

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.

Pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(A), a petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of the performances.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 30, 2010. The petitioner seeks to employ the two beneficiaries as Martial Arts Instructors/Performers. The petitioner indicates that the beneficiaries are "talented martial arts master[s]" and "highly skilled in various kinds of fighting skills and feats of Shaolin Kung Fu, such as sword, spear, fist, and broadsword." The petitioner notes that the beneficiaries "have won various awards and honors in the martial arts field in the past few years."

The petitioner indicates that the beneficiaries will receive a salary of \$3,000 per month, as well as travel and lodging for competitions and tournaments. The beneficiaries will "serve as [the petitioner's] performer and athlete for martial arts tournaments and performance; martial arts instructor in Kung Fu and other self-defense techniques," as well as "serve as martial arts choreographers and instructors at various exhibitions and competitions [in] which [the petitioner] will participate during the employment period."

In a letter confirming the terms and conditions of the beneficiaries' employment, the petitioner described their responsibilities as follows:

Your primary job duties will consist of teaching all levels of our martial arts classes, coaching various competitions and event teams, representing our school at various performances, demonstration events, and other coming activities in 2010 and 2011.

In a letter dated November 2, 2010, submitted in response to the director's request for a more detailed description of the beneficiaries' duties, counsel indicated that the beneficiaries will:

- 1.) Perform and demonstrate traditional Chinese martial arts at various cultural events to American audience; (30%) (Approximately 12 hours/week).
- 2.) Teach Chinese martial arts to all levels of classes, especially intermediate and advanced levels; (45%) (Approximately 18 hours/week)
- 3.) Coach the petitioner's top-notch Chinese martial arts competition teams (25%) (Approximately 10 hours/week)

The petitioner submitted an itinerary listing its scheduled events for the period August 2010 through August 2011. The events proposed during the requested period of employment include an "International Shaolin Kung Fu Competition" to be held at the petition's location on April 3, 2011. The petitioner sponsors and participates in

a number of festivals and Chinese celebrations throughout the year, several of which appear to involve martial arts demonstrations, including the [REDACTED] the petitioner's own [REDACTED] Some of the events on the itinerary, such as dance festivals, dance competitions, painting and music competitions, appear to be limited to those specific artistic disciplines.

The petitioner also indicates that it offers martial arts classes six days per week, offers a martial arts summer camp from June through August, and participates in approximately 20 additional contracted performances at San Francisco Bay Area community events during the year.

In his letter dated November 2, 2010, counsel explained:

All activities and events the beneficiaries will attend are culturally unique martial arts events. Chinese Martial Arts (also known as Kung Fu or Wushu) is culturally unique to China. Many of martial arts masters in the U.S. are originally from China, they came here to introduce martial arts, as an integral part of Chinese culture, to the America[n] people, and thus to benefit the people both physically and mentally.

The beneficiaries will be performing and teaching Chinese martial arts at the petitioner's training schools in San Jose. In addition, he will also perform martial arts at a wide variety of other places in the San Francisco Bay Area and other states. By participating in these events, the beneficiaries will show Chinese traditional culture to the audience. It will further the understanding and development of Chinese Martial Arts.

A. The Issues on Appeal

The first issue to be addressed is whether the petitioner established that the beneficiaries possess culturally unique skills by submitting the evidence required under 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. The petitioner initially submitted *Wikipedia* articles discussing Chinese martial arts and Shaolin Kung Fu, an article titled "An Introduction to Chinese Martial Arts," and evidence of the beneficiaries' certificates as evidence of the authenticity of their culturally unique skills.

In a request for evidence ("RFE") issued on September 28, 2010, the director requested both forms of evidence, as well as evidence that the beneficiaries are coming to the United States to participate in a cultural event or events that will further the understanding and development of the beneficiaries' 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 submitted four letters in response to the RFE. [REDACTED] president and chief coach of USA O-[REDACTED] states that the beneficiaries' [REDACTED] skills are very culturally unique, which are part of traditional Chinese culture." He further states:

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.

[REDACTED] states that the beneficiaries "can make significant contributions to the propagation of development of Chinese martial arts and traditional culture in the United States."

The petitioner also submitted a letter from [REDACTED] president and chief instructor of U.S. Shaolin Kung Fu in Oakland, California, who states:

I have known [the beneficiaries] 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 the physical and mental health of our people. Overall, I feel that they are valuable assets to the martial arts community in our country. . . .

[REDACTED] president and head instructor of [REDACTED] 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." [REDACTED] further states that "the masters have culturally unique skills, that is, [REDACTED] and all of their performances and events are culturally unique." Finally, he states 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."

Finally, the petitioner submitted a letter from [REDACTED] president and chief instructor [REDACTED] 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.

[REDACTED] 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 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 director found that the testimonial evidence did not satisfy the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A) because the letters fail to state the credentials of the attestations' authors and the basis of their knowledge of the beneficiaries' skills.

On appeal, counsel asserts that the director erred by determining that the letters do not meet the regulatory requirements. Counsel states:

These experts are President and/or Chief Coach of various martial arts schools in the San Francisco Bay Area. All of these letters contain the job title and a detailed description of the qualifications of the experts. And all the letters were printed on the official letterhead of these martial arts schools.

Upon review, we agree with the director that the letters submitted 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 beneficiary's performances or instruction methods, or how the beneficiary's 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 beneficiary's skill. [REDACTED] simply states that he has "been familiar with [the beneficiaries] and their reputation as competitive martial artists and excellent performers" and that they are "fellow martial arts performers of Chinese martial arts in San Francisco Bay Area." Similarly, [REDACTED] and [REDACTED] state that the beneficiaries are "world famous" but offer no further information as to how they know of the beneficiaries. [REDACTED] states that he "personally attended" the beneficiaries' "shows and performance," but offers no further details as to when or where these performances occurred.

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 Kung Fu 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,

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

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 is a Chinese martial art, simply establishing that the beneficiaries are skilled and well-qualified Kung Fu 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. 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).

Accordingly, the AAO concurs with the director's determination that the testimonial evidence submitted does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. 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 has submitted a general *Wikipedia* articles on "Chinese martial arts" and "Shaolin Kung Fu" and the results of a Google search for the term "Chinese culture Shaolin Kung Fu." We note that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).² With respect to the Google search results, we emphasize that it is the petitioner's burden to

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).

² See also a copy of the online content from [http://en.wikipedia.org/wiki/Wikipedia: General_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on April 11, 2011, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or

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 beneficiaries 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.

Counsel's broad assertion that "Chinese martial arts . . . is culturally unique to China," cannot be accepted in lieu of actual documentation that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). 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). 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).

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

The director concluded 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, upon review of the itinerary submitted, "it appears that some of the events are not culturally unique." The director noted that the itinerary includes events such as a folk instrument competition, youth performing troupe audition, photo and painting exhibit, New Year's Gala, and a dance summer camp that are "not cultural events to further the understanding of the beneficiaries' art form."

On appeal, counsel for the petitioner emphasizes that the beneficiaries will participate only in martial arts related events and activities and will not participate in other events, such as dance competitions, sponsored by the petitioner's Chinese cultural organization.

Upon review, the AAO agrees, in part, with counsel's assertions. The petitioner has consistently indicated that the beneficiaries will be teaching and performing Chinese martial arts and there was no basis on which to conclude that they would participate in the petitioner's other Chinese programs, such as visual arts or dance classes or competitions. Therefore, 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 and participates in martial arts tournaments, and includes martial arts performances on the programs of some of its Chinese cultural programs and celebrations. Assuming that the petitioner establishes through submission of the required evidence that the beneficiaries' martial arts teachings and performances are culturally unique, the martial arts performances listed in the itinerary could be considered culturally unique events.

altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

However, as discussed above, the petitioner failed to establish that the beneficiaries' performances are culturally unique by submitting evidence to meet the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A) or 8 C.F.R. § 214.2(p)(6)(ii)(B).

In addition, we note that, based on the petitioner's representations, the beneficiaries will devote the majority of their time to teaching martial arts to students at the petitioner's school, and coaching its competitive martial arts teams, rather than performing the claimed culturally unique skill of traditional Shaolin Kung Fu. 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, and it has not been established that the petitioner's martial arts school is a culturally unique arts program. The record contains no description or documentation of the petitioner's martial arts instructional program.

The petitioner cannot establish the beneficiaries' eligibility as culturally unique artists or performers simply by claiming that they will be performing traditional Chinese martial arts and establishing that they were trained in the discipline in China. The petitioner must establish that the instant beneficiaries' performances, and the specific artistic or entertainment events for which their services are sought, 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 the "Chinese Shaolin Kung Fu tradition" are insufficient to establish the beneficiaries' eligibility.

Based on the foregoing, the petitioner has not established that the beneficiaries will be performing as artists or entertainers at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

III. Prior Approvals and Conclusion

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 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 petition will be denied.

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. 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). 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). The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petition was approved based on evidence similar to that contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the petitioner's request to extend the beneficiaries' status.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). 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.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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 appeal is dismissed.