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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

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DATE: DEC 12 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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 this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner is self-described as a Chinese martial arts production company. It seeks to employ the beneficiary as an "art performer" for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary possesses culturally unique style of artistic expression or that all of his performances or presentations would be culturally unique events. In denying the petition, the director noted that the petitioner's evidence did not satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner states that it is submitting additional evidence to establish: (1) that the beneficiary possesses a culturally unique style of artistic expression; (2) that the beneficiary is an exceptionally skilled individual who has mastered the unique style of artistic expression; and (3) that he will be participating in culturally unique events that will allow him to promote his art in the United States. The petitioner submits scholarly articles, additional letters of recommendation, published materials, and an updated schedule of events in support of the appeal.

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.

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.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. On appeal, the petitioner does not identify, either on the Form I-290B, Notice of Appeal or Motion, or in its one-page brief, any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. In fact, the petitioner does not acknowledge any adverse finding made in the director decision.

The appeal consists solely of additional evidence. The submission of additional evidence on appeal is permitted by the instructions to Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). While the petitioner has submitted additional evidence, it must also provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed. The petitioner has failed to provide this required statement. The instructions for the Form I-290B advise the petitioner that its appeal will be dismissed if it does not complete Part 3, Basis for the Appeal or Motion.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.