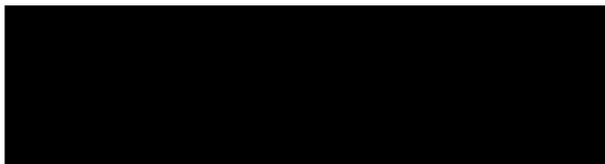


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



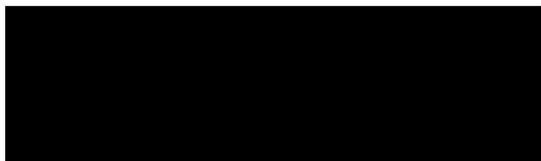
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

IN RE: Petitioner: [REDACTED]
Beneficiaries: [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:



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 classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as artists or entertainers coming to the United States to perform under a culturally unique program. The petitioner is a Chinese performing arts organization and the beneficiaries are martial artists. The petitioner seeks to employ the beneficiaries as Martial Arts Instructors/Performers for a period of one year.

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 the events in which the beneficiaries would perform. Finally, the director noted that, based on the itinerary submitted, it appeared that the beneficiaries would be performing in some "culturally eclectic programs, rather than culturally unique ones."

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 and teach martial arts, including Shaolin Kung Fu and Tai Chi, to the general public," and will participate only in the petitioner's martial arts-related events and activities. Counsel further contends that, while some of the events organized by the petitioner are "culturally eclectic" in that non-Chinese performers may attend, its own artists consistently offer a comprehensive program in the culturally unique Chinese performing arts.

Upon review, the AAO agrees with counsel's arguments and will withdraw the director's decision dated June 24, 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.

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 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 February 5, 2010, the petitioner described the beneficiary's proposed duties as:

[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."

The petitioner submitted an itinerary listing its scheduled events for the period February 2010 through June 2011. The events proposed during the requested period of employment include an "International Martial Arts Tournament" scheduled for February 28, 2010 and a "Chinese Martial Arts Tournament," scheduled for April 24, 2010. The itinerary indicates that the petitioner holds martial arts classes at its academy six days per week. 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. Some of the events on the itinerary, such as dance festivals, dance competitions, painting and photo competitions, appear to be limited to those specific artistic disciplines.

In a request for evidence issued on April 6, 2010, the director instructed the petitioner to provide, *inter alia*: (1) an explanation of the nature of the events and activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and (2) 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.

In a response dated May 10, 2010, counsel stated that "[a]ll activities and events the beneficiaries will attend are culturally unique martial arts events." The petitioner submitted a brochure advertising its Academy and [REDACTED] Kung Fu school. According to the brochure, the petitioner offers a training school for "1,200 students of performing arts, visual arts and martial arts."

The director denied the petition on June 24, 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, upon review of the itinerary submitted, "the events appear unclear if a 'Ballroom Dance Competition' or 'Dance Talent Competition' as listed on the itinerary, are cultural events or events which will further the understanding or development of the beneficiaries' martial arts skills." The director further observed that "in some of the advertisements submitted by the petitioner, regarding events produced by the petitioner, include performances of other cultures such as an Afghani vocalist or Ballet." The director concluded that "although some of the events listed in the record appear that they might be culturally unique . . . the evidence also indicates that the beneficiary would also be performing in culturally eclectic programs, rather than culturally unique ones."

On appeal, counsel for the petitioner emphasizes that the petitioning organization is "comprehensive organization in the field of Chinese culture performance and development," and, as such, it holds a wide variety of events and activities, including Chinese martial arts. Counsel emphasizes that the petitioner has "clearly and repeatedly indicated that the beneficiaries are martial arts masters, they will perform and teach martial arts, including Shaolin Kung Fu and Tai Chi, to the general public in the United States." Counsel states that the beneficiaries will participate only in martial arts related events and activities and will not participate in other events, such as dance competitions.

With respect to the director's determination that some of the events would be "culturally eclectic," based on the presence of an Afghani vocalist at one of the petitioner's galas, counsel asserts that "even though the gala was comprehensive and culturally eclectic, the martial arts program performed by the beneficiaries itself was culturally unique."

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 in their respective disciplines of Shaolin Kung Fu and Tai Chi, and there was no basis on which to conclude that they would participate in the petitioner's other programs, such as a visual arts or dance competition. 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 cultural celebrations or festivals that may include a performer from a different cultural tradition 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 and participates in martial arts tournaments, and includes martial arts performances on the programs of some of its Chinese cultural programs and celebrations. Accordingly, the AAO will withdraw the director's decision dated June 24, 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 petitioner did not submit any evidence to satisfy this criterion. The record contains a letter from [REDACTED] which is described as "a professional organization for martial art masters in the United States." This letter was submitted to satisfy the regulatory requirement to provide a written consultation from a labor organization, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), and indicates that this organization has no objection to the approval of the P-3 petition. The petitioner has not submitted affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiaries' skills in performing, presenting, coaching or teaching the unique or traditional art form.

The record 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 beneficiaries' performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials. The petitioner has submitted a general Wikipedia article on "Chinese martial arts" and the results of a Google search for the term "Chinese culture martial arts." 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).¹ With respect to the 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.

Counsel's broad assertion that "it is well documented 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.

¹ 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 January 28, 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 altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

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).

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 [REDACTED] 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 will compete 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. 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.