

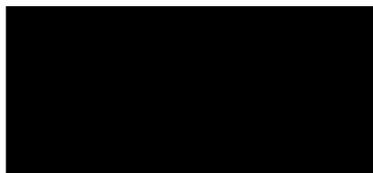
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



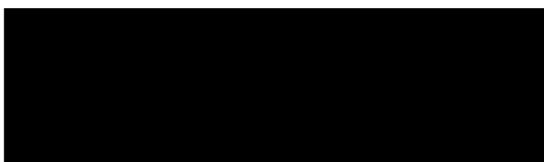
D9

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

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:



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,

Jerry 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, a martial arts school, 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 seeks to employ the beneficiary as a martial arts instructor/performer for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary possesses culturally unique skills; and (2) that all of the beneficiary's performances or presentations would be culturally unique events. The director further determined that the petitioner failed to submit a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D). The director questioned whether Chinese martial arts, as practiced and taught within the context of the petitioner's Kung Fu studio, is a culturally unique art form.

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 asserts that the director "erroneously denied the petitioner's petition based upon his or her own criteria, rather than those under the immigration law." Counsel maintains that it is "well documented that Chinese martial arts is culturally unique to China," and "has been in integral part of traditional Chinese culture for more than 2,000 years." Counsel contends that the evidence of record establishes the authenticity of the beneficiary's culturally unique skills and that all of his activities on behalf of the petitioner will be culturally unique.

### **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)(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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines "arts" as follows:

*Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

## II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 30, 2009. The petitioner seeks to employ the beneficiary, a 21-year-old native of China, as a Martial Arts Instructor/Performer. The petitioner indicates that the beneficiary is "a talented martial arts master" and "highly skilled in various kinds of fighting skills and feats of Shaolin Kung Fu, such as sword, spear, fist, stuff [*sic*] and broadsword."

The petitioner is self-described as "one of the premier martial arts schools in the United States specialized in teaching and training various traditional Chinese martial arts, including Shaolin Kung Fu." In a letter dated December 20, 2009, the petitioner stated that its school is focused on "teaching and training students in a wide variety of traditional Chinese martial arts and other modern self-defense techniques, such as Tai Chi, Kung Fu, Spear, Sword, Stuff [*sic*], Broadsword, Fist and Kickboxing." The petitioner indicates that it also "strives to pass on the traditions of Chinese culture associated with martial arts not only to its students, but also to the general public," by providing "martial arts, lion and dragon dance performance and exhibition at a variety of events and venues throughout the United States."

The petitioner submitted a brochure and class schedule for its Kung Fu studio. The petitioner's brochure describes "kung fu" as follows:

The words "Kung Fu" can be literally translated as "skill from effort." It is the generic name for any martial arts that comes from China. There are literally hundreds of different Kung Fu styles and then there are sub-styles and family styles within those. The variations are complex and wide-ranging. These different styles of Kung Fu encompass what can be termed "soft" or "internal" as well as "hard" or "external." Some styles emphasize strikes and kicks; others include grappling, ground fighting or pressure-point attacks or a vast variety of weapons training. Almost all styles of Kung-Fu teach the use of throws, grappling holds, weapons and self-defense. It is therefore a more broad and complex system of combat than many other martial arts.

The brochure indicates that the petitioner's studio offers a "well-rounded curriculum" that "covers a variety of Kung fu styles." The petitioner indicates that its children's kung fu programs "place a special emphasis on the mental attributes of concentration, self-control and patience as we work to perfect the physical principles of balance, timing and coordination." The petitioner's adult Kung Fu program is described as a "sport-oriented fitness program," and "a high-energy workout." The petitioner indicates that its program teaches "the physical principles of self-defense" and "mental awareness."

The petitioner submitted a copy of its employment offer letter to the beneficiary, which states:

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.

In its letter dated December 20, 2009, the petitioner further stated that the beneficiary "agrees to serve as our performer and athlete for martial arts tournaments and performance; martial arts instructor in Kung Fu and other self-defense techniques" as well as a "martial arts choreographer and instructor at various exhibitions and competitions which Petitioner will participate during the employment period."

The petitioner submitted a performance and competition schedule for the first six months of 2010, which includes Chinese New Year Celebrations, the Silicon Valley Spring Festival Celebration, the "Festival of Silk Road," and various martial arts tournaments. According to the petitioner's brochure, it also offers martial arts classes seven days per week.

#### **A. The Issues on Appeal**

The first issue to be addressed is whether the petitioner established that the beneficiary possesses 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. In a request for evidence ("RFE") issued on January 15, 2010, the director requested both forms of evidence, as well as evidence that the beneficiary is coming to the United States to participate in a cultural event or events that will further the understanding and development of his 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 initially submitted a Wikipedia article discussing Chinese martial arts, an article titled "An Introduction to Chinese Martial Arts," and evidence of the beneficiary's awards and certificates as evidence of the authenticity of his culturally unique skills.

In the RFE, the director instructed the petitioner to provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skill in performing or presenting the unique or traditional art form.

The petitioner submitted four letters in response to the RFE. The first letter was from [REDACTED] [REDACTED] states:

I have been familiar with [the beneficiary] and his reputation as competitive martial artist and excellent performer. He has received formal Kung Fu training at the world-famous Shaolin Temple at Song Mountain, Henan Province, China. He is a renowned martial artist who has won a number of national and international competitions, but [sic] most of all, I am impressed by his advanced skills and expertise as martial arts performer. Combined with his solid education in physical education theory, he has designed very effective and beautiful martial arts feats and skills; he has performed extensively in many countries across the world.

[REDACTED] further states that the beneficiary's "skills and experience is a valuable resource for the development of Chinese culture in America."

The petitioner also submitted a letter from [REDACTED] president and head coach [REDACTED]. He describes the beneficiary as "a world famous Kung Fu player and performer," who "has won many awards and honors in the field." [REDACTED] indicates that the beneficiary has "extensive experience in performing and teaching" and has the "ability to make significant contribution to the development of martial arts in the United States." Finally, he states that the beneficiary's "stay in the United States will enhance the culture and the health of its people."

The petitioner provided a third letter from [REDACTED] president and chief coach [REDACTED] [REDACTED] states that the beneficiary is "a leading and key member of the world-renowned Shaolin Warrior Monks." He further states:

[The beneficiary] is a world famous Shaolin Kung Fu master. He has won many awards and honors in the field, including Henan Province 9<sup>th</sup> Sports Competition, 2005 "Great Wall Cup" China National Shaolin Fist Wushu Tournament, "Kangli Cup" Henan Province Martial Arts Championship, etc.

Having extensive experience in performing and teaching [the beneficiary] has been much appreciated by the martial arts community in the San Francisco Bay Area. He is definitely a top master with an international acclaim. His accomplishments and contribution are far more important than many other professional masters. I have full confidence in his ability to make significant contribution to the development of Shaolin Kung Fu in the United States. Also, it is evident that his stay in the United States will enhance the culture and the health of its people.

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

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

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

The director found that while the submitted letters praise the beneficiary's skills as a martial artist, they fail to attest to the authenticity of the beneficiary's skill in performing, presenting, teaching of coaching a culturally unique art form. The AAO agrees. While we do not doubt the beneficiary's abilities as a martial artist, we note that none of the letters attests with any specificity to the cultural or traditional elements of the beneficiary's performance or his coaching 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 beneficiary as a "world famous" martial artist who has made "significant contributions" to the development of martial arts, without mentioning any culturally unique aspects of his performance.

The director further found 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 she has "been familiar with [the beneficiary] and his reputation as competitive martial artist and excellent performer" and that he is a "fellow martial arts performer of Chinese martial arts in San Francisco Bay Area." Similarly, [REDACTED] and [REDACTED] state that the beneficiary is "world famous" but offer no further information as to how they know of the beneficiary. [REDACTED] states that he "personally attended" the beneficiary's "shows and performances," but offers no further details as to when or where these performances occurred. Moreover, there are entire paragraphs that are repeated almost verbatim when comparing [REDACTED] letter with [REDACTED] letter. The near-verbatim repetition of entire paragraphs indicates that the language in each letter is not the author's own and further detracts from its probative value. Overall, the letters fail to establish the manner in which the authors gained knowledge of the beneficiary's skill, fail to establish the credentials of the authors, and fail to reference any culturally unique aspects of the beneficiary's Kung Fu performance.

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.<sup>1</sup> 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 is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified Kung Fu practitioner trained in China is not sufficient to demonstrate his eligibility for this classification. Here, the four letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

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).

The director also reviewed the beneficiary's awards and prizes for competitions in Shaolin fist, sparring, staff and sword events and determined that the awards certificates alone do not establish whether or how the beneficiary's skills are culturally unique. The AAO agrees with this assessment. The award certificates are issued by the China National Sports Administration and provincial Chinese sports administrations. They establish that the beneficiary has been a successful competitive athlete in Kung Fu competitions in China.

The director acknowledged that the petitioner submitted photographs of the beneficiary performing martial arts in traditional attire, but noted that "anyone can buy a similar outfit from different sources on the internet, copy some poses seen in books, movies, television or the internet, and then have their pictures taken." While the AAO concurs that the photographs and awards certificates cannot be accepted as evidence of the beneficiary's culturally

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<sup>1</sup> 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).

unique skills in lieu of the evidence at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), the director's comments regarding the photographs are inappropriate and will be withdrawn. The AAO does not doubt that the beneficiary is an experienced and highly trained martial artist who underwent years of training and practice in order to execute the forms demonstrated in the photographs.

*B. 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 articles regarding Chinese martial arts from Wikipedia and other sources. However, the regulation requires the petitioner to submit evidence that the *beneficiary's* performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. Despite claims in the record that the beneficiary is "world famous," the petitioner has not submitted any published materials that mention the beneficiary, and thus it has not submitted evidence that satisfies the plain language of this regulatory criterion.

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

The director determined that the beneficiary's proposed performances or presentations as a martial arts instructor/performer will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). Specifically, the director found that the petitioner did not establish that a martial arts class or competition can be considered a "culturally unique" event.

The director discussed at length the issue of whether Chinese martial arts, or Wushu, is a culturally unique art form. The director discussed the information provided by the petitioner with respect to the history of Chinese martial arts, noting that "it is unclear whether Wushu, as taught and practiced throughout the United States and the rest of the world today, is still 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 director noted that the petitioner describes its own Kung Fu program, in part, as "a sport-oriented fitness program," and "a high-energy workout," raising questions as to whether the type of Wushu or Kung Fu taught by the petitioner's school is culturally unique.

This issue is relevant as the petitioner indicates that more than half of the beneficiary's time in the United States will be spent teaching and coaching Kung Fu at the petitioner's studio, while approximately 30 percent of his time will be devoted to performing and demonstrating "traditional Chinese martial arts at various cultural events to American audience."

Several of the articles submitted by the petitioner pertain to efforts by Shaolin Temple monk [REDACTED] to have Shaolin Kung Fu given World Heritage status by the United Nations Educational, Scientific and Cultural Organization (UNESCO). One article, "China's Shaolin Kung fu abbot takes on the UN," from the March 12, 2005 online edition of *China Daily* states:

The reason we are strongly recommending Shaolin kung fu be included on UNESCO's list is because it represents many valuable aspects of Chinese culture," says, [REDACTED] who is regarded by many as a "kung fu master" as a matter of course.

[REDACTED] is also a deputy attending the current National People's Congress in Beijing, and the martial art's busiest social activist, promoting the image of Shaolin kung fu, which "mainly comprises of Zen Buddhism, martial arts and medical knowledge," and dates back over 1,500 years.

To gain UNESCO status, a cultural icon must be seen to offer the "practices, representations, expressions, as well as the knowledge and skills, that communities, groups and, in some cases, individuals recognize as part of their cultural heritage."

And [REDACTED] is confident that Shaolin kung fu fits the bill. "It is today a magical martial art and stands apart from other forms of kung fu. It is an important part of Chinese culture. This is why it should be listed by UNESCO," said the abbot.

Shaolin kung fu is based on the belief in the supernatural powers of Buddhism. "The martial arts practiced by monks in the Shaolin Temple are their major form of expression," [REDACTED] said. According to history, the revered monk Bodhidharma spread Zen Buddhism at Shaolin Temple in the 6<sup>th</sup> century. And today, the temple is regarded as the cradle of Zen Buddhism, which is the outcome of Chinese learning and Indian Buddhist culture. "It embodies a thorough understanding of life interpreted by oriental wisdom," explains Shi.

The article goes on to discuss [REDACTED] proposal to the Chinese government "to consider a special law to protect the country's 'traditional knowledge' and heritage which includes ethnic and folk culture and art." [REDACTED] has also "established a company to protect intellectual property rights and prevent the abuse of the name Shaolin by companies seeking easy profits."

Upon review of the submitted articles, it is evident that there are significant differences between the Shaolin kung fu performed at the Shaolin Temple, which does appear to incorporate religious, traditional, and cultural elements, and other forms of Kung Fu performed as sport in China and throughout the world. Although the petitioner and counsel indicate in letters that the petitioner's school teaches "Shaolin kung fu," the petitioner's own brochures and advertising materials do not use the words "Shaolin" or make any specific references to Chinese culture, tradition, medical knowledge, or Zen Buddhism. The petitioner indicates that its curriculum covers "a variety of Kung fu styles," and advertises its programs as a good workout, fitness and self-defense program that will "condition your body and sharpen your mind." The fact that Kung Fu originated in China does not equate to a finding that all modern Kung Fu programs continue to offer "culturally unique" activities.

The AAO acknowledges that two of the individuals who have provided testimonial evidence indicated that the beneficiary was 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 beneficiary other than copies of four awards he won at Kung Fu sports events in China. Regardless of whether the beneficiary is or was a Shaolin monk, the

evidence of record does not establish that he would be incorporating the traditional, religious or cultural elements of Shaolin Kung Fu as an instructor in the petitioner's generalized and fitness-oriented Kung Fu curriculum.

On appeal, counsel reiterates that "Chinese Martial arts, also known as Kung Fu or Wushu, combines the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy," and asserts that "it is well-documented that Chinese martial arts is culturally unique to China."

However, the claimed "culturally unique events" in which the beneficiary will participate are daily martial arts classes for students of various levels in a Kung Fu school that makes no claim to incorporate "elements of Chinese religion, medicine and philosophy." The beneficiary will not be "performing" or "presenting" as an artist or entertainer, and the AAO cannot conclude that a modern Kung Fu class in a school that incorporates a variety of Kung Fu styles is a culturally unique event.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be performing "Chinese martial arts" and submitting evidence that he competed in Kung Fu sports competitions in China. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment events for which his services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance across all events and activities is 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 martial arts" tradition are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that all of the beneficiary's performances or presentations will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

The final issue to be addressed is whether the petitioner submitted a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D). Pursuant to 8 C.F.R. § 214.2(p)(7)(i)(A), consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved. In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record. 8 C.F.R. § 214.2(p)(7)(i)(E).

The director determined that the organization that provided the consultation, [REDACTED] doing business as International Kungfu Zen Association, is not a labor organization and that the petitioner had failed to establish that an appropriate labor organization does not exist. Counsel has not acknowledged the lack of an appropriate consultation as a basis for the denial of the petition or otherwise addressed this issue on appeal. Accordingly, the AAO affirms the director's determination and will dismiss the appeal. In response to the RFE, counsel asserted that "there is no appropriate labor organization in the field of martial arts in the United States." However, this statement is insufficient to meet the petitioner's burden to establish that an "appropriate labor organization does not exist." 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).

### **III. Conclusion**

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he 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 the beneficiary's form of artistic expression and 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) and 214.2(p)(6)(ii). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

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.