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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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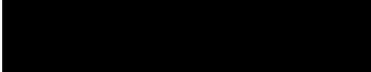
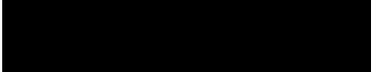
U.S. Citizenship
and Immigration
Services



D9

FILE:  Office: CALIFORNIA SERVICE CENTER

Date: FEB 02 2011

IN RE: Petitioner: 
 Beneficiary: 

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, a non-profit performing 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 in a culturally unique program. The petitioner seeks to employ the beneficiary, a cellist, as a Teaching Artist for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary's art form is culturally unique or that all of her activities or performances would be culturally unique events.

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 director's decision is inconsistent with applicable law and policies and disregards relevant and probative evidence. Counsel contends that the evidence of record demonstrate the beneficiary's "formidable skills in the culturally unique art form of East Slavic and Belarusian music." Counsel submits a brief and additional evidence in support of the appeal.

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.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 26, 2010. In a letter dated March 2, 2010, the petitioner stated that it is a not-for profit organization organized for the purpose "to provide career-oriented training in the performing arts, particularly in music, theatre and ballet" to underserved urban youth. The petitioner stated that it operates a performing arts school that provides daily classes in the disciplines of classical, folk, and jazz music, dance and theatre, and a chartered academic school serving children in grades 1 through 8.

The petitioner explained that it invites Teaching Artists from diverse international backgrounds to provide "culturally unique music and theatre classes" during its academic year and Summer Growth Program. It further stated that, over the past few years, it has experienced increased interest from Russian, Ukrainian, Belarusian and other East Slavic communities in Queens borough, and as a result has "taken considerable efforts to adapt our teaching and performing curriculum to include materials from the rich and established tradition of East Slavic folklore." The petitioner stated that it seeks to have the beneficiary teach East Slavic and Belarusian traditional folk music to its students during the regular academic year and as part of its summer program, as well as to

participate in musical performances "by performing her original interpretations of East Slavic folk musical pieces."

The beneficiary is a classically trained cellist and pianist who received a Master's degree in music from [REDACTED]. She has performed with the [REDACTED] and the [REDACTED] which the petitioner describes as "a chamber group devoted to artistic interpretation and performance of Belarusian and East Slavic folk music." The petitioner describes the beneficiary as "a qualified teacher with considerable experience teaching music to children." Specifically, the petitioner indicates that the beneficiary has "taught cello and musicality courses concentrating in Slavic folklore at [REDACTED] in Mogilev, Belarus."

The petitioner submitted the beneficiary's resume and evidence of her academic qualifications as a trained musician in support of the petition. The beneficiary indicates that she has "excellent sight-reading skills, as well as extensive orchestral experience, solo ability and musical versatility in various symphonic and commercial settings." The beneficiary's resume lists her experiences as a member of various strings ensembles, orchestras, chamber groups and two rock bands from 2004 to the present, and her experience as a cello teacher at "Music School #5" in Belarus from 2003 to 2004. There is no reference to traditional or folk music in the beneficiary's resume.

A. Culturally Unique Art Form

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 chose to submit evidence in the form of testimonial letters pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Such evidence must come from recognized experts and attest to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form. The testimonial evidence must also give the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill. *Id.*

The petitioner submitted several letters in support of the petition, including a letter dated March 3, 2010 from [REDACTED] stated:

[The beneficiary] is an extraordinarily talented cellist specializing in performance of folk music of East Slavic tradition including Belarusian folklore. She is an experienced classically trained performer with an established reputation. [The beneficiary] is seeking a change of nonimmigrant status in order to accept temporary employment in the US as a Teaching Arts with [the petitioner] in order to teach and perform her original interpretations of the traditional East Slavic and Belarusian folk music. Her employment will be cultural in nature and appropriate for a P-3 classification as it would present a culturally unique opportunity for American audiences to learn and appreciate first hand this important musical heritage.

¹ The petitioner indicated that it was submitting the letter from [REDACTED] to satisfy the regulatory requirement for a written consultation from a labor organization, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D). As will be discussed further below, [REDACTED] is not a "labor organization." Accordingly, we have considered this evidence under the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The AAO notes that [REDACTED] failed to state the basis of his knowledge of the beneficiary's skills in performing Belarusian and East Slavic folk music, and therefore his letter does not satisfy the plain language of this evidentiary criterion.

The petitioner also submitted a letter dated March 3, 2010 from [REDACTED] [REDACTED] With respect to the beneficiary, he states:

In 2007/08, [the beneficiary] took a class in Belarusian traditional instrumental music culture that I taught then. She appeared to be an open-minded, globally and systematically thinking and, at the same time a deeply rooted person, musician and student. Of my impressions of [the beneficiary] I can witness her critical mind, ability to set priorities correctly, and most considerably, her mature vision of traditional cultures, with focus made on the Belarusian folk music. It is noteworthy that the former quality appears to be quite rare among classically trained Belarusian conservatory students many of which sadly tend to neglect their vernacular culture these days.

[REDACTED] states that he has learned that the beneficiary has come to New York to teach and promote Belarusian folk music, and notes that "given [her] attitude and ability for highly productive pedagogical and artistic work, she is the kind of person that can and does make difference with anything for what she goes."

Upon review, [REDACTED] letter does little more than confirm that the beneficiary was a student in a "Belarusian traditional instrumental culture" class as recently as 2008, presumably as part of her Master's degree studies, and that she was regarded as a dedicated and enthusiastic student by her professor. The letter does not specifically attest to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional cultural art form, nor discuss the unique traditions of Belarusian folk music.

The petitioner submitted a third letter from [REDACTED] Entertainment. According to the beneficiary's resume, she performed with [REDACTED] [REDACTED] in New York in 2009. Of the beneficiary, [REDACTED] states:

[The beneficiary] was introduced to me as a person who is not afraid to experiment musically. I ask her to collaborate on a musical project for an annual celebration of Russian Rock. This once a year event brings together local and very established Russian bands. . . .

[The beneficiary] came with ideas and sounds, that different from every cellist I ever played with. She started playing harmonies, that traditionally performed by vocals, but never cello. She was able to adapt a familiar to rhythm guitar sound into her own instrument. She created a mix of traditional classical music with rock and roll sound and became a unique addition to my band.

She is very talented musician. By the nature of her extraordinary creativity, she taught me many lessons in musical compositions.

Also she is very close to her Belorussian roots. She plays a lot of folk music. This folklore style of playing is rare when it comes to instrumental cello. She was able to compose elements of this

unique folk and bring it to my songs. My music has been brought up to a completely different level.

statement that the beneficiary "plays a lot of folk music," and her observation that it is unusual for a cellist to play such music falls significantly short of attesting to the authenticity of the beneficiary's performance of a traditional or unique art form. While appears to be a successful musician in her genre, she fails to establish her own credentials and the basis of her expertise in the field of culturally unique Belarusian music. The fact that the beneficiary plays "folk music" does not automatically lead to a finding that her performance is culturally unique.

The fourth letter submitted at the time of filing was from . She states that the beneficiary "has made valuable contributions to promoting East Slavic and Belarusian musical culture." further states:

I first met [the beneficiary] when she was my student and I have followed her musical career for the past four years. She has distinguished herself as a perfect cellist and enthusiast in interpretation of traditional Belarusian folk music and songs. She performed with in a number of concerts devoted to Belarusian folklore music.

In my professional opinion [the beneficiary's] interpretation of folk music meets the very highest standards of performance art. She is a wonderfully original artists [sic] who brings unique interpretation of the rich cultural tradition of East Slavic and Belarusian folklore. She is able to compose and recreate musical themes and songs common to the larger East Slavic region which includes Belarus, Ukraine and Russia, as well as those closely related to small unique regions of Belarus.

further describes the beneficiary as an "excellent" teacher of cello, piano and singing, and states that she "always includes any Belarusian folk music as part of her lesson plan."

While affirmatively states that the beneficiary has performed Belarusian folk music in the past, she cites no specifics other than referring to "a number of concerts", given by the in which Belarusian folk music was featured. Rather she generally refers to the beneficiary's career as if the beneficiary is an established folk music artist. As discussed below, the evidence of record as a whole does not support such a conclusion. also failed to address what makes "East Slavic and Belarusian musical culture" unique.

The director issued a request for additional evidence on March 15, 2010, in which she instructed the petitioner to submit additional documentary evidence to establish that the art form which the beneficiary performs or teaches is culturally unique, as well as additional evidence of the authenticity of the beneficiary's culturally unique skills in the form of affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing, presenting, coaching or teaching the unique or traditional art form.

The petitioner did not submit additional affidavits, testimonials or letters in response to the RFE, but instead chose to submit the letters that were previously submitted. The petitioner submitted a slightly revised resume for the beneficiary. The resume submitted at the time of filing indicated that the beneficiary taught at from 2003 to 2004, but makes no references to the beneficiary's performance or teaching of

traditional or folk music. It simply states that the beneficiary taught children to play cello and piano, developed children's musical skills, taught how to hold the cello and bow, and taught the foundations of solfeggio and theory. The resume submitted in response to the RFE indicates that the beneficiary taught at [REDACTED] from 2004 until 2005. The description of the beneficiary's duties as a cello teacher are the same, but she added that she taught children to play cello and piano "with emphasis on East Slavic and Belarusian folk music." The petitioner also submitted a letter from the [REDACTED] indicating that the beneficiary taught cello at the school from September 2004 until May 2005. The principal states that "in addition to standard curriculum, she concentrated on cultivating Belarusian folklore," and "promoted in her students love and appreciation of their national heritage."

In response to the director's request for evidence that the beneficiary's art form is culturally unique, the petitioner stated:

East Slavic folk music represents a culturally unique style of musical performance specific to areas inhabited [sic] by East Slavic ethnic groups, which include Belarus, East Ukraine, parts of Russia and Lithuania. Belarusian traditional music comprises an important segment of more generally defined East Slavic folk music and has evolved as a distinct but inseparable part of the East Slavic musical tradition.

Although traditionally performed by amateurs *a-capella* or with traditional musical instruments such as fiddles, flutes and harmonicas, in the last two decades since Belarus became an independent state; Belarusian folk music has been increasingly incorporated into mainstream musical culture in Belarus and is being performed by individuals, ensembles and chamber orchestras at major venues. There is also an increased interest in folk music among the younger generation of Belarusian musicians who bring their talent and interpretative skills to adopt this rich musical tradition to be performed with a larger variety of classical and modern instruments such as violin, cello, acoustic and electric guitar, and piano.

In support of these claims, the petitioner submitted an article titled "The Folk Music of Belarus" from the website *A Virtual Guide to Belarus*. The article does not specifically mention any performances of traditional Belarusian folk music by classically-trained ensembles or chamber orchestras. The article contains the following passage:

In the past 14 years of Belarusian independence an interesting trend has appeared in Belarus. People with highest conservatory education have started to study and perform original traditional Belarusian folk music. Academicians went folk music. . . . These new collectives study the music of Belarusian regions trying to find Belarusian folk standards, perform them in undistorted original ways. They restore or build from scratch ancient Belarusian musical instruments. They cherishingly study and perform things like pipe tunes. They work on creating traditional folk costumes of the region etc.

The petitioner submitted an excerpt from the "official homepage of the Belarusian ethno folk group GUDA." This group is mentioned in the above-referenced article as one of the new folk music groups that performs Belarusian folk standards in "undistorted original ways." The evidence indicates that this group regularly performs at international folk and ethnic music festivals.

The petitioner submitted a partial copy of the *Wikipedia* article "The Music of Belarus." The article indicates that Belarus has "a rich tradition of folk and religious music," with folk traditions that can be traced "back to the times of the Grand Duchy of Lithuania." The article includes a brief description of traditional music in the 15th through 17th centuries, but does not discuss modern cello interpretations of traditional folk music as a culturally unique art form.

The director concluded that the testimonials and supporting evidence regarding Belarusian folk music do not support a finding that the beneficiary's performances are culturally unique. The director found that the petitioner had failed to submit any objective, independent documentary evidence to establish that the cello or piano are part of the Belarusian folk music tradition.

The director also evaluated each of the letters submitted and concluded that none of the testimonials attest to the cultural uniqueness of the beneficiary's skill, or to the beneficiary's skills in performing, presenting, coaching or teaching a culturally unique or traditional art form. The director reviewed the beneficiary's academic credentials, awards and prior experience noting that neither the beneficiary's academic training nor her experience as a professional musician reflect her experience or skill in teaching or performing a culturally unique art form. Rather, the director concluded that, as a citizen of Belarus, the beneficiary has been exposed to traditional East Slavic and Belarusian folk music, and that this exposure has influenced her original work as a classically trained cellist. The director found that "the evidence is inadequate to show that an individual's exposure to, and interpretation of, a traditional art form is equal to possessing skills in teaching or performing that art form.

On appeal, counsel asserts that the director's contention that the cello and piano are not commonly used in East Slavic or Belarusian music is erroneous and based on an improper interpretation of the petitioner's statements and other evidence submitted in support of the petition. Counsel emphasizes that the petitioner specifically stated in its letter dated April 23, 2010 that the younger generation of Belarusian musicians have adopted that country's musical traditions "to be performed with a larger variety of classical and modern instruments such as violin, cello, acoustic and electric guitar and piano." Counsel contends that the director's RFE was "over-generalized" and "did not ask for any documentary evidence specific to the use of cello or piano in performance of East Slavic and Belarusian folk music." The director further asserts that "it is unfair and prejudicial to require the petitioner to provide detailed documentary evidence on every aspect of the beneficiary's qualifications."

In support of the appeal, the petitioner submits a second letter from [REDACTED] dated July 5, 2010, who states:

Having taught a course in [REDACTED] [the beneficiary] in the past, I can attest to the authenticity of her skills as performer of East Slavic/Belarusian traditional folk music. [The beneficiary] showed tremendous interest and initiative in mastering deep understanding and performance of Belarusian traditional music. . . .

[The beneficiary's] performance of East Slavic and Belarusian music including her artistic interpretation of traditional musical pieces is culturally unique – it represents musical tradition that is specific to the East Slavic and particularly Belarusian culture, and is rarely found in folk music of other regions and ethnic groups.

I would like to emphasize that classical training such as one received by [the beneficiary] at the [REDACTED] is a common path for professional musicians in Belarus, and provides excellent background for specializing in performance of traditional folk music.

It is noteworthy that the present-day performing artists focusing on Eastern European traditional music often tend to find their unique and deeply individual means of expression and interpretation to the music. In the course of her academic studies in [REDACTED] principally through her active participation in my class, [the beneficiary] had discovered that the cello, the instrument she plays, is widely used throughout the Eastern European music cultures, including sometimes as a substitute for the basset and the contrabass (upright bass), with well-developed respective techniques and ways of articulation.

The petitioner also submits a new letter from [REDACTED] who states:

I met [the beneficiary] at an informal musical performance that she gave at one of the East European music festivals that regularly take place in New York. She immediately captured my attention, because of her unique ability to play folk music on cello. Cello is often used in folk music performances to enrich and emphasize the sound. When I heard [the beneficiary's] performance I was instantly charmed and impressed. She was playing a unique mix of Belarusian Folk. The "Belarusian folk" itself is different from other Eastern European folklore music. Throughout may historical events, the music had integrated with Baltic and Norwegian musical cultures, therefore the folk music of Belarus is unique among other Slavic music traditions.

Counsel further asserts that the director unreasonably disregarded the content and probative value of the testimonial evidence submitted, and "chose to ignore the patently clear evidence of the beneficiary's skills as teacher and performer of a culturally unique art form," as set forth in the letters from [REDACTED]

Upon review, the AAO will uphold the director's determination. 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.² USCIS will, however, reject an expert opinion or give it less

² 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,

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.'").

Here, the claims regarding the beneficiary's skills in performing and teaching a unique or traditional art form are not in accord with other information in the record. The AAO agrees with counsel's assertions on appeal that the fact that the beneficiary plays the cello, and the fact that she is classically trained, need not lead to a conclusion that the beneficiary does not also possess skills in performing and teaching a culturally unique art form. However, it is reasonable to expect other evidence in the record to support the petitioner's statements and the statements of the individuals who have provided testimonial letters in support of the petition.

According to the beneficiary's resume, while residing in Belarus, she was a member of the [REDACTED] of popular music, the [REDACTED] and the [REDACTED]. She also toured with the rock group [REDACTED] in Russia and Eastern Europe in 2007. While in the United States since 2009, she has performed as a member of [REDACTED] and as a member of the [REDACTED], both based in New York, and has performed as a member of the band of popular [REDACTED]. The beneficiary's resume, as submitted at the time of filing, makes no reference to her skills or experience in Belarusian folk or traditional music. Any reasonable person reviewing her qualifications would conclude that she is a classical and contemporary musician by training and profession.

With one exception, the petitioner has not claimed that the beneficiary has been a member of any group that specializes in performance of traditional Belarusian folk music. The petitioner does claim that [REDACTED] is "devoted to artistic interpretation and performance of Belarusian and East Slavic folk music." [REDACTED] also stated that the beneficiary "performed with [REDACTED] in a number of concerts devoted to Belarusian folklore music." However, the record contains no documentary evidence to corroborate these statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). The AAO did review the beneficiary's MySpace page, which is referenced on her resume. She has posted videos of her performances with the [REDACTED]. These videos include the performance of works by Gershwin, Bach and Mozart, a piece titled "Gipsy" and a tango.³ All other videos posted on the beneficiary's music page are performances of rock music. It is the petitioner's burden to establish that the beneficiary possesses experience in performing the claimed culturally unique art form.

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).

³ See www.myspace.com/alexandramoiseeva (accessed on January 20, 2010), copy incorporated into record of proceeding.

The beneficiary's only claimed teaching experience is as a cello teacher with [REDACTED] Belarus. The beneficiary's resume, at the time of filing, simply stated that she taught children how to play cello and piano, how to hold the cello and bow, and foundations of solfeggio and theory. In response to the RFE, the petitioner submitted a revised resume in which the beneficiary added that her teaching placed an "emphasis on East Slavic and Belarusian folk music." A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). A letter from the employer, also submitted in response to the RFE, stated that the beneficiary taught the standard curriculum but also "concentrated on cultivating Belarusian folklore," but this vague statement does not meet the petitioner's burden to establish through the submission of evidence that the beneficiary is a culturally unique artist or teacher.

Furthermore, although the petitioner claims that the beneficiary worked as a cello teacher with an emphasis on culturally unique Belarusian folk music in 2004, the more recent letter from [REDACTED] suggests that the beneficiary was introduced to Belarusian traditional music through his class in 2007 or 2008, several years after her tenure as a teacher at [REDACTED]. Again, while the AAO does not doubt that the beneficiary's musical education included at least one class in traditional Belarusian music, we cannot deem her to be a "culturally unique artist" based on her completion of a college course.

In light of the lack of objective evidence of the beneficiary's experience in teaching and performing the claimed traditional art form, the AAO finds the submitted testimonial evidence is not probative of the "culturally unique" nature of the beneficiary's performance. Accordingly, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A), and the appeal will be dismissed.

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

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) requires the petitioner to submit evidence that all of the beneficiary's performances or presentations will be culturally unique events. At the time of filing, the petitioner stated that the beneficiary will "teach East Slavic and Belarusian traditional folk music to our students during regular academic year and as part of our Summer Growth Program as well as to participate in musical performances of our company by performing her original interpretations of East Slavic folk musical pieces."

While the petitioner initially submitted various documents and brochures providing background information regarding its arts and academic programs, it did not provide any specific information regarding the courses the beneficiary would teach or the performances in which she would engage. The petitioner did provide descriptions of its "afterschool growth program," "performance arts training," "year-round early childhood program," and "summer growth program." None of this documentation mentioned any classes in any type of folk arts, despite the petitioner's statement that it has "taken considerable efforts to adapt our teaching and performing curriculum to include materials from the rich and established tradition of East Slavic folklore." As noted above, the petitioner states that it regularly invites Teaching Artists to "provide culturally unique music and theatre classes."

In response to the director's request for evidence that the beneficiary's performances and presentations will be culturally unique events, the petitioner stated that the beneficiary will be teaching an overview course in [REDACTED] in cooperation with a Bulgarian teacher and a Polish teacher during the school's Summer Growth Program. The petitioner indicated that the beneficiary would be teaching the same course during the school's academic year. In addition to her teaching responsibilities, the beneficiary would participate in the petitioner's Cabaret

program held twice monthly, at which she would be "providing musical accompaniment to singers of East Slavic and Belarusian folk songs and through solo and group performances of her original interpretations of traditional East Slavic and Belarusian musical pieces." Finally, the petitioner indicated that the beneficiary would be providing musical accompaniment to the Belarusian character dances in the school's [REDACTED] which will feature "traditional Belarusian folk songs."

The director determined that "while aspects of what the petitioner does may have cultural elements, the majority of the services provided, and the vast number of performances produced by the petitioner are not cultural events which will further the understanding or development of the beneficiary's purported culturally unique art form." The director further observed that while the program in which a P-3 classified alien artist may be diverse, all of its components must be "culturally unique" as defined under the pertinent regulations.

On appeal, counsel asserts the regulations do not require that all or most of the petitioner's activities constitute culturally unique events. Rather, counsel asserts that the applicable regulatory requirement that all of the performances or presentations will be culturally unique is limited to the performances and presentations in which the beneficiary will participate. Counsel asserts that the petitioner's activities which will not include participation by the beneficiary are not relevant to the instant petition.

Upon review, the AAO agrees, in part, with counsel's assertions. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances or presentations are culturally unique, the fact that such performances and presentations would not occur within the confines of a "cultural event," or the fact that the petitioner is engaged in a diverse array of educational and arts activities, is irrelevant. Although the statute and regulations refer to a "commercial or noncommercial program that is culturally unique," the term "program" is not defined and no specific requirements are set forth for the petitioner to establish that such a program exists. Rather, the petitioner is required to submit evidence that "all of the performances or presentations will be culturally unique events." An event is defined as an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement, and can include an entire season of performances. 8 C.F.R. § 214.2(p)(3). In this case, the petitioner indicates that the events in which the beneficiary would engage would be limited to teaching and performing in her claimed area of specialization. The petitioner does not have to be a cultural organization or operate an overtly cultural program dedicated solely to the beneficiary's culturally unique art form in order to satisfy this requirement.

For the reasons discussed above, however, the petitioner has not met its evidentiary burden to establish that the beneficiary is a "culturally unique artist" and therefore it cannot establish that all of her performances or presentations are culturally unique events. Furthermore, even if the petitioner had submitted sufficient evidence to establish that the beneficiary is a performer and teacher of culturally unique Belarusian folk music, the petitioner indicates that she would work with two other teachers of different nationalities to teach "an overview course in Slavic music," which appears to be a broader genre than the beneficiary's claimed area of expertise in teaching and performing Belarusian folk music for cello.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that she will be performing and teaching "Slavic music" or by stating that the beneficiary herself has a unique skill set. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment events for which her services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance and the event itself 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 "Slavic Music" 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, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). For this additional reason, the appeal will be dismissed.

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 at 1043.

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.