

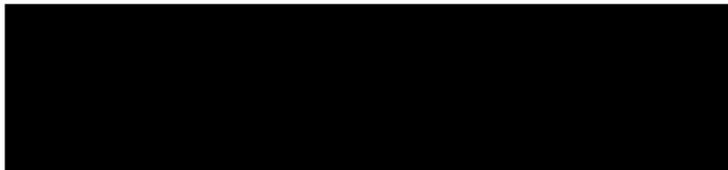
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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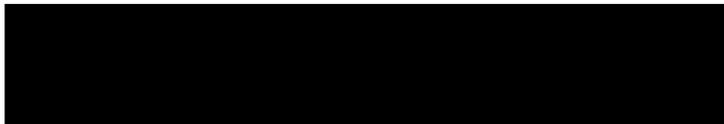
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2011

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.

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 sustain the appeal and approve the petition.

The petitioner filed the nonimmigrant petition seeking to classify 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 a culturally unique artist or entertainer. The petitioner, a non-profit organization, is a performance group that showcases traditional Philippine culture through dance, performance and traditional art forms. It seeks to employ the beneficiary as an artistic director and choreographer for a period of approximately 19 months.<sup>1</sup>

The director denied the petition, concluding that the petitioner failed to establish that all of the beneficiary's proposed performances or presentations will 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 objects to the director's finding that the beneficiary must perform "at culturally unique events." Counsel contends that the regulations require that the performances themselves be culturally unique and that the events be cultural. Counsel emphasizes that the petitioner's program is a traditional, Filipino cultural program, and that all of its performances, regardless of venue, are performed "in furtherance of the understanding and development of Philippine Folkloric Dance."

Upon review of the totality of the record, the petitioner and beneficiary meet all eligibility requirements for P-3 classification. Accordingly, the director's decision will be withdrawn and the petition will be approved.

## **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.

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(p)(8)(iii)(C), an approved petition for an artist or entertainer under section 101(a)(15)(P)(iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity or performance for which the P-3 alien is admitted, not to exceed one (1) year. Therefore, the requested 19-month validity period cannot be granted.

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, even 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)(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 submitted evidence that all of the beneficiary's performances or presentations will be culturally unique events. 8 C.F.R. § 214.2(p)(6)(ii)(C).

The evidence of record demonstrates that the beneficiary is a dancer and choreographer with 25 years of experience in Philippine folkloric dance. The petitioner is self-described as a non-profit performance group that showcases traditional Philippine culture through dance, performance and traditional art forms. The evidence in the record documents the authenticity of the beneficiary's culturally unique skills, as required by the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B).

The petitioner seeks to employ the beneficiary as its artistic director for the purpose of training its dance ensemble in traditional folkloric dances as a choreographer. The petitioner indicates that he will "oversee [sic], conceive, develop and implement the artistic vision and focus of [the petitioner]" and ensure that "the ensemble's Philippine aesthetic values, folkloric and artistic concepts and activities are guarded."

The petitioner submitted a Schedule of Performances for 2010, which includes a Sinulog Festival, the Philippine Nurses Association of Nevada Annual Valentine's Ball, the Gotohon ni Noy and Mar "People Power Festival," the VIP Gala of the Asian Festival and Tradeshow, the Census 2010 World Fest, the Governor's Arts Awards, the Henderson Heritage Parade and Festival, [REDACTED] Association [REDACTED] Celebration, the Cebu City Medical Center Alumni Association [REDACTED] the Fil-Am Heritage Month Celebration, the Philippine Visayan Society of Nevada, an annual Christmas Caroling Fundraising project, the National Federation of Filipino American Associations Induction Ball, three private wedding receptions, and two birthday celebrations. All of the events will take place in or near Las Vegas, Nevada. In response to a request for evidence, the petitioner submitted a more detailed itinerary with additional information regarding each event, as well as several additional events that had been added to the schedule.

The director denied the petition on June 23, 2010, based on the following conclusion:

Performing the role of performer/choreographer and artistic director for a series of folk dance performances may be considered culturally unique, however, the petitioner has not established that performances at weddings, birthday parties, school alumni reunions, Christmas caroling, and a Valentine's ball are culturally unique.

The director acknowledged that the beneficiary would be participating in festivals and cultural celebrations in addition to the referenced events, but emphasized that "while the program in which a P-3 classified alien artist may be diverse, all of its components must be 'culturally unique.'"

On appeal, counsel asserts that the director erred by requiring the petitioner to establish that all of the beneficiary's performances would be "at culturally unique events." Counsel asserts that there is no such requirement in the statute or regulations, and that the petitioner must only establish that the performances themselves will be culturally unique and that the events be cultural. Counsel contends that all of the beneficiary's performances and the petitioner's program are culturally unique.

Counsel asserts that the petitioner's program is "a traditional, cultural program," and that the petitioner has performed in parades, community festivals and "festival of nations" types of events. Counsel notes that while the petitioner has been asked on occasion to perform at private events, such as at traditional Philippine weddings, these events were cultural events because the petitioner performed "a folkloric dance traditionally performed at Philippine weddings." Counsel further emphasizes that, although the petitioner's group performed at a birthday party, the party itself was for a Filipino celebrity, was open to the public, and "was organized for the purpose of sharing Philippine culture." Counsel notes that the petitioner performed dances traditionally performed at birthday celebrations for this event.

Counsel contends that all of the petitioner's public performances are culturally unique events because they are performances, artistic exhibits and dances performed in furtherance of the understanding and development of [REDACTED]. Counsel contends that the petitioner performs "only traditional folkloric dances that have special and significant meanings," and that they perform "wearing only traditional performance costumes," and that there are traditional and folkloric dances that are specific to different special occasions and to different regions of the Philippines. Counsel emphasizes that the regulations and statute require that the petitioner's programs, rather than the performance venue, be culturally unique.

Finally, counsel emphasizes that many of the events which the director found objectionable, including the wedding and birthday celebration performances, occurred early in 2010 prior to the filing of the petition. Counsel asserts that past events that are unlikely to be repeated in the future should not have formed part of the basis for the denial of the petition.

The petitioner provides a detailed annotated schedule of performances in support of the appeal in which it explains the group's recent and upcoming events in additional detail, describing the culturally unique aspects of each event.

Upon review of the record, the AAO finds counsel's assertions persuasive. The petitioner has provided detailed itineraries which describe the nature and purpose of each of the beneficiary's proposed performances and presentations and provided ample evidence to establish that all of the beneficiary's performances and presentations will be culturally unique events designed to further the understanding of the group's Filipino dance art forms. Furthermore, while the petitioner may occasionally perform at a private event or celebration, the record supports a finding that all of the performances will be culturally unique, regardless of the venue. The petitioner is clearly established as a Filipino cultural organization with the sole purpose of performing folk dances from the Philippines. Its performances are cultural events regardless of where they are performed. There is no requirement that the beneficiary perform with the petitioner solely at venues or events that are considered overtly "cultural."

Based on the foregoing, the AAO will withdraw the director's determination that the beneficiary's performances and presentations will not be culturally unique events.

The director cited no other grounds for denying the petition, and upon *de novo* review, the AAO sees no additional basis for denial. Accordingly, the AAO will withdraw the director's decision dated June 23, 2010 and approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, the petitioner has met its burden of proof.

**ORDER:** The appeal is sustained.