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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

[redacted]

Dq

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 28 2011

IN RE: Petitioner: [redacted]
Beneficiaries:

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: SELF-REPRESENTED

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 dance company, filed this 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 in a culturally unique program. The petitioner indicated that it seeks to employ the beneficiaries as choreographers for a workshop for a period of one month.

The director denied the petition, concluding that the petitioner failed to submit evidence to establish: (1) that the beneficiaries perform as a "group" as defined at 8 C.F.R. § 214.2(p)(3); and (2) that the beneficiaries' performances are culturally unique. The director noted that the petitioner did not submit evidence to satisfy the regulatory criteria at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it is submitting additional evidence to establish that the beneficiaries "offer dance lessons that are culturally unique to India," and to establish the relationship between the two beneficiaries.

Upon review, and for the reasons discussed herein, the AAO will uphold the director's decision.

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.

Pursuant to 8 C.F.R. 214.2(p)(3), "Group" means two or more persons established as one entity or unit to perform or to provide a service.

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.

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a request for additional evidence ("RFE") dated June 25, 2010, the petitioner's response to the

RFE, the director's notice of denial dated July 15, 2010, and the petitioner's appeal. The record contains a written contract between the petitioner and the beneficiary, and an explanation regarding the nature of the event at which the beneficiaries will teach, as required by 8 C.F.R. § 214.2(p)(2)(ii).

II. The Issues

A. Multiple Beneficiaries

The first issue addressed by the director is whether the petitioner established that the two beneficiaries are a "group" as defined at 8 C.F.R. § 214.2(p)(3).

As stated above, the regulation at 8 C.F.R. § 214.2(p)(6)(i)(A) provides that a P-3 classification may be accorded to artists or entertainers, individually or as a group. The regulation at 8 C.F.R. § 214.2(p)(2)(iv) addresses petitions involving multiple beneficiaries:

> (F) Multiple beneficiaries. More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiaries' "group name" is "" On the O and P Classification Supplement to Form I-129, where asked to describe the nature of the event, the petitioner stated: "[the beneficiary] is a in India. He will conduct a workshop as a Celebrity Choreographer." The petitioner did not mention the second beneficiary, , or his role in the group.

On June 25, 2010, the director issued an RFE in which he instructed the petitioner to submit, *inter alia*, the following: (1) a copy of any written contracts between the petitioner and the beneficiaries; (2) evidence to establish that the beneficiaries are an established group; (3) an explanation of job duties; and (4) evidence to satisfy the regulatory evidentiary criteria at 8 C.F.R. § 214.2(p)(6)(ii), as no supporting evidence had been provided to establish that the beneficiaries' skills are culturally unique.

The petitioner's response included a signed agreement between the petitioner and beneficiary dated May 21, 2010, under which agreed to conduct a workshop for the petitioner. The agreement makes no reference to the second beneficiary or to The petitioner also submitted a "Workshop Instructor Contract," dated May 21, 2010, which identifies both beneficiaries as "the artist who will conduct workshop." This contract is not signed by any party.

The petitioner also submitted a copy of the biographical page of passport, on which the following statement was handwritten: will assist for the workshop as he is employed by and is well aware of Dance taught by "

Finally, the petitioner's response to the RFE included a copy of resume and several articles written about him.

The director denied the petition on July 15, 2010, concluding that the petitioner failed to establish that the beneficiaries are an established group as defined under 8 C.F.R. § 214.2(p)(3).

On appeal, the petitioner indicates that it is providing "additional evidence that establishes relationship" between the two beneficiaries. The petitioner does not contend that the previously submitted evidence establishes that the two beneficiaries are an established group, but rather seeks to submit documentary evidence that it failed to submit in response to the director's RFE. This evidence includes a copy of ten-year contract with Company" signed in April 2005 and copies of several photographs showing the beneficiary with the dance company.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner opted to submit a handwritten note indicating that is employee in lieu of providing the requested explanation of job duties for the group and evidence that the two beneficiaries are an established group. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Accordingly, the appeal will be dismissed.

B. "Culturally Unique"

The second issue on appeal is whether the petitioner established that the beneficiaries' performance is culturally unique as defined at 8 C.F.R. § 214.2(p)(3). A petitioner's claim that the beneficiaries' performances are culturally unique must be supported by the evidence required by 8 C.F.R. § 214.2(p)(6)(ii). Specifically, the regulations require that the petitioner establish that the beneficiaries' performance is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work.

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 did not support any evidence in support of the petition at the time of filing. The director specifically addressed this evidentiary criterion in the RFE issued on June 25, 2010; however, the petitioner's response did not include any affidavits, testimonials or letters. Accordingly, the director correctly determined that no evidence was submitted to meet this criterion.

On appeal, the petitioner submits two testimonial letters in support of this criterion. The petitioner is only required to submit evidence to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A) *or* (B) and therefore, it complied with the director's evidence when it submitted in its response evidence pertaining to 8 C.F.R. § 214.2(p)(6)(ii)(B). Accordingly, we will review this newly submitted evidence.

The petitioner submits a letter dated July 26, 2010 from Productions Pvt. Ltd., who states:

> This is to certify that I have known over 10 years. He has developed his own unique style in Contemporary dance. He is also a great teacher of India folk and Modern Dance forms. I have worked with him in the past in and have also worked with him in my new movie 'Whats your ' that released last year. His Assistant was his Chief Assistant on the sets for 'What's your has choreographed for several other stars of Indian Cinema, and is now a well known Dance, a Reality Dance show which is telecast in several countries over the globe including USA. He has inspired many a young talent to take up Dance as a serious Profession and also offers Dance Scholarships to the dedicated candidates through his

The petitioner also provides a letter from director of (P) Ltd, an Indian film production company credited with 52 films over its 50 year history. states that has choreographed two films for his company. With respect to the beneficiary's "culturally unique" skills, he states:

> has a huge fan following thanks to his Contemporary style of Dancing which he made famous in the show a Reality Dance Competition show which has been successfully aired for two seasons in India and abroad. His teaching styles and his passion to inculcate Dance as a serious discipline in the youth is known by all in the Industry, and our Actors are also sent to his Academy to hone their dance skills before a movie shoot.

identifies as "assistant" and attests to their "professionalism and expertise in the field of dance."

Upon review of this testimonial evidence, we find that neither nor have attested with any specificity to the authenticity of the beneficiaries' skills in performing, presenting, coaching, or teaching the claimed culturally unique or traditional art form of and in fact have not mentioned this art form in their letters. Furthermore, both individuals appear to Indian filmmakers and have failed to establish their credentials in the field of dance. While their testimony confirms that the beneficiary is a commercially successful choreographer and television personality, and letter contains a reference to the beneficiary's skills in teaching "Indian folk" dance, the letters are insufficient to satisfy this criterion. Neither letter establishes how the beneficiaries' performances or art form are "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons," and nor do they attest with any specificity to the cultural or traditional elements of the beneficiaries' performance or the authenticity of their skills.

The petitioner has also submitted a letter from the beneficiary, in support of the appeal. While the beneficiary could be recognized as an expert in the field of dance, the petitioner cannot rely on the beneficiary's own self-serving testimony to establish his eligibility under this evidentiary criterion. We note that indicates that he has developed his own "Indo-Contemporary" dance form based on his training in contemporary dance received in the United States and his foundation in classical Indian dance or Kathak. He indicates that he would be teaching classes in this "Indo-Contemporary" dance form in the United States, and makes no mention of the "Bollywood dance" workshops which formed the basis of the petitioner's request for his services.

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.[1] However, USCIS will 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. 1988).

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[1] 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).

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 three letters submitted are deficient for the reasons discussed and cannot be deemed probative of the "culturally unique" nature of the beneficiaries' performance. As such, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

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.

In response to the RFE, the petitioner submitted copies of six newspaper and magazine articles. The petitioner submitted an article from an edition of magazine entitled ' ' The article describes as a "choreographer and fitness instructor" who "specializes in jazz, ballet and contemporary dance." The article mentions the beneficiary's recent work in choreographing music videos and states that he has choreographed several box office hits. The article also discusses the beneficiary's training in contemporary dance at two well-known his work as a personal trainer to celebrities, and the establishment of his own contemporary dance company in 2000.

The petitioner submitted an articled titled which mentions the launch of the reality television show " " on which the beneficiary serves as resident celebrity choreographer and judge on the show.

The petitioner submitted an article titled "Follow these rules or else" which discusses injuries on the set of " " and measures taken to prevent accidents.

A fourth article, titled "Striking the right poise" discusses the with where campers can "shake a leg to hip-hop, salsa and Bollywood music." The article is partially illegible.

The petitioner submitted a copy of an article titled got the moves: At the Dance Camp with finale, rocked the stage with their sensational moves." No other portions of this article were legible in the facsimile copy received by USCIS. A sixth article entitled ' steps to success" was also mostly illegible. The petitioner submits clear photocopies of these two articles on appeal, but has not included complete copies of the articles. The latter article mentions that the beneficiary's contemporary dance company offers a course "with practical and theory classes, which encompasses jazz, ballet, kathak, bharatnatyam, yoga, etc."

The director determined that the submitted newspaper and magazine articles failed to meet the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(B). The director noted that some of the articles were illegible and found that the legible articles establish that the beneficiary is a popular choreographer and fitness instructor known for jazz, ballet, hip-hop, salsa and contemporary dance, rather than any cultural art form unique to The director noted that none of the submitted articles mention the beneficiary or document that his performances are culturally unique.

Upon review, the AAO concurs with the director's conclusion. While the articles establish the beneficiary's recognition as a popular choreographer in India, the articles are not in the form of reviews and do not document how the beneficiaries' performance is culturally unique. Accordingly, such evidence does not satisfy the plain language of the regulations. Further, as noted by the director, the articles mention only one of the beneficiaries.

One of the submitted articles, "Striking the right poise" mentions that was one of the dance forms taught at the beneficiary's dance camp, and is the only article that even mentions the style of dance the beneficiary is to teach in the United States. The AAO cannot find that a single reference to the beneficiary and dance, with no discussion of its cultural uniqueness, is sufficient to meet the petitioner's evidentiary burden under this criterion.

The regulations require the petitioner to lay an evidentiary foundation to support its claim that is a culturally unique style of artistic expression by submitting relevant and probative evidence pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The petitioner has not submitted evidence to satisfy either of these evidentiary requirements and therefore has not submitted evidence that would overcome the basis for denial of the petition.

As noted above, the petitioner has submitted a letter from the beneficiary, in which he describes his "Indo-Contemporary" style of dance and its traditional roots. However, this letter cannot be accepted in lieu of the evidence required by the regulations. 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)).

Based on the foregoing discussion, the AAO concurs with the director's conclusion that the petitioner has not submitted evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and therefore has not demonstrated that the beneficiaries are culturally unique performers.

III. Conclusion and Prior Approval

In summary, the statute requires that the beneficiary 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 beneficiaries under this section of the Act, the petitioner

must submit evidence that all of the beneficiaries' performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the petition will be denied.

The AAO acknowledges that USCIS previously approved a P-3 petition filed on behalf of by an unrelated petitioner. While the petitioner suggests that the facts were similar in the previous matter, each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

As discussed above, the evidence in the current record fails to establish how the instant beneficiaries' form of artistic expression is culturally unique as it does not contain required evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Nothing in this decision should be taken to suggest that the AAO fails to recognize or appreciate the talent the beneficiary possesses or the success he has achieved in his field. The denial of this petition is without prejudice to the filing of a new petition, with required supporting evidence, in an appropriate visa classification.

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 petition is denied.