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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
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IN RE:

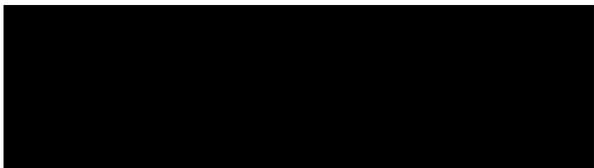
Petitioner:

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 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 an artist or entertainer coming to the United States to perform under a culturally unique program. The petitioner is engaged in Chinese martial arts teaching and performance and seeks to employ the beneficiary in the position of martial arts instructor/performer for a period of one year. The beneficiary was employed in P-3 status with an unrelated martial arts school at the time of filing.<sup>1</sup>

The director denied the petition, concluding that the petitioner: (1) failed to provide evidence to establish that the beneficiary possesses culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B); and (2) failed to establish that all of the beneficiary's performances or presentations would be culturally unique events. The director acknowledged that the beneficiary was previously granted P-3 status with a different employer, but emphasized that employment with new petitioner warrants a full review of the petitioner's and beneficiary's eligibility.

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 petitioner submitted ample evidence to establish all eligibility requirements for P-3 classification, and notes that "no material change has taken place in terms of the nature of the petitioner and all events and activities of the beneficiary." Counsel asserts that the statements made in the denial reflect that the director "does not know what Chinese martial arts, [REDACTED] is at all." Counsel submits a brief, but no 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

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<sup>1</sup> The beneficiary's most recent prior P-3 petition authorizing employment with [REDACTED] expired on June 10, 2010. [REDACTED] filed a timely petition to extend the beneficiary's status, which was denied on or about October 15, 2010. [REDACTED]

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)(3) states, in pertinent part:

*Competition, event or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, and stopovers which are incidental and/or related to the activity. An athletic activity or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

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.

Pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(A), a petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of the performances.

## II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 8, 2010. In a letter dated October 1, 2010, the petitioner indicated that the beneficiary is "a talented martial arts master" who is "highly skilled in various kinds of fighting skills and feats of [REDACTED] such as sword, spear, fist, staff [sic], and broadsword." The petitioner indicated that the beneficiary has won awards and honors in martial arts including two event championships in the [REDACTED] and has been certified as a First Degree [REDACTED] by the [REDACTED]

The petitioner further noted that the beneficiary has judged martial arts tournaments in the United States and performed martial arts at various places in Northern California. The petitioner's president indicates that he has "personally attended several shows of the beneficiary," and found that "his spectacular performance has demonstrated great speed, power, flexibility and inherent difficulty."

The petitioner indicates that the beneficiary will receive a salary of \$3,000 per month, as well as travel and lodging for competitions and tournaments. The beneficiary will "serve as [the petitioner's] performer and athlete for martial arts tournaments and performance; martial arts instructor in Kung Fu and other self-defense techniques," as well as "serve as martial arts choreographer and instructor at various exhibitions and competitions [in] which [the petitioner] will participate during the employment period."

In a letter confirming the terms and conditions of the beneficiary's employment, the petitioner described his proposed responsibilities as follows:

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 and 2011.

The petitioner did not submit an itinerary or other explanation of events and activities at the time of filing, but did submit a copy of its weekly class schedule as of September 2010. The petitioner offers martial arts classes to

students of all levels six days per week. The petitioner's brochure indicates that its instructors are "professional kung fu athletes from China who have gone through many years of strict training and won numerous national championship titles." The petitioner's brochures emphasize that its program teaches confidence, focus, self-discipline, respect and physical fitness.

In its letter dated October 1, 2010, the petitioner stated that in addition to its martial arts classes it "provides martial arts, lion and dragon dance performance and exhibition at a variety of events and venues throughout the United States, using the physical arts as a means of introducing the American people to the rich culture of China." The petitioner indicated that it performs at parades, culture fairs, theme parks, high schools and universities and corporate events.

In a subsequent letter dated November 15, 2010, the petitioner further explained as follows:

All activities and events the beneficiary will attend are culturally unique martial arts events. Chinese Martial Arts (also known as [REDACTED] is culturally unique to China. Many of martial arts masters in the U.S. are originally from China, they came here to introduce martial arts, as an integral part of Chinese culture, to the America[n] people, and thus to benefit the people both physically and mentally.

The beneficiary will be performing and teaching Chinese martial arts at the petitioner's training schools in [REDACTED]. In addition, he will also perform martial arts at a wide variety of other places in the San Francisco Bay Area and other states. By participating in these events, the beneficiary will show Chinese traditional culture to the audience. It will further the understanding and development of Chinese Martial Arts.

With respect to the beneficiary's qualifications, the petitioner submitted various awards and certificates documenting his experience as a martial arts coach, competitor, performer and judge, which included the following

- Certificate of Appreciation issued to the beneficiary for judging at The 2<sup>nd</sup> Annual [REDACTED] [REDACTED] June 12, 2010;
- Certificate of Recognition for Outstanding Performance at the [REDACTED] [REDACTED] held in San Francisco, July 2010;
- Certificate issued to the beneficiary for participation in the 2009 [REDACTED] [REDACTED] of San Francisco Bay Area, held June 28, 2009;
- Certificates of Appreciation awarded to the beneficiary for judging at the 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> Annual [REDACTED] [REDACTED] hosted by [REDACTED] [REDACTED] March 24, 2007, April 5, 2008, and May 1, 2010;
- Certificate of Award issued by the [REDACTED] [REDACTED] indicating that the beneficiary was the [REDACTED] [REDACTED] at the [REDACTED] [REDACTED] held in Guangzhou in 2003.

- Certificate of Award issued by the [REDACTED] indicating that the beneficiary was the [REDACTED] event at the [REDACTED] held in Hunan in July 2002;
- Certificate of Award issued by the [REDACTED] indicating that the beneficiary received Fifth Place in [REDACTED] at the 2004 [REDACTED] China [REDACTED] in Wuhan in June 2004;
- Level One Athlete Certificate in Wushu, awarded by the [REDACTED] based on the beneficiary's performance in a competition held at Wuhan [REDACTED] in 2003;
- Degree Certificate indicating that the beneficiary graduated from the [REDACTED] with a major in Chinese Martial Arts in June 2004.
- Certificates of Award issued by the Organizing Committee of the [REDACTED] indicating that the beneficiary was awarded Second Place in [REDACTED] and Third Place in Staff in October 2002.
- Certificate of Award issued by the [REDACTED] indicating that the beneficiary was awarded First Place in [REDACTED] in 1999.

#### 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. The petitioner initially submitted *Wikipedia* articles discussing Chinese martial arts and Shaolin Kung Fu, an article titled "An Introduction to Chinese Martial Arts," and the above-referenced certificates and awards as evidence of the beneficiary's culturally unique skills.

In a request for evidence ("RFE") issued on October 21, 2010, the director requested both forms of evidence specified at 8 C.F.R. § 214.2(p)(6)(ii), 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.

At the time of filing, the petitioner submitted a letter from [REDACTED] of the [REDACTED] which is described as "a professional organization for martial art masters in the United States." This letter was submitted to satisfy the regulatory requirement to provide a written consultation from a

labor organization, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), and indicates that this organization has no objection to the approval of the P-3 petition.

The petitioner submitted three letters in response to the RFE. [REDACTED], president and chief coach of [REDACTED] states that the beneficiary is "a leading and key member of the world-renowned [REDACTED] [REDACTED]. He indicates that he beneficiary is "a world famous Shaolin Kung Fu master" who has won many awards and honors. [REDACTED] further states:

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 health of its people.

The petitioner submitted a second letter from [REDACTED], president and chief instructor of [REDACTED]. With respect to the beneficiary, [REDACTED] states:

[The beneficiary] is a world famous Kung Li master. He has won many awards and honors in the field. He has performed martial arts at various places both in the United States. I have been in the martial arts community for more than 15 years. His accomplishments and contribution are far more important than many other professional masters. It is evident that his stay in the United State [sic] will enhance the culture and health of its people.

[REDACTED] further states:

Wushu is an important component of the cultural heritage of China. Beginning as an ancient Chinese form of self-defense, Wushu literally means "martial arts" and encompasses the forms popularly known in the West as Kung Fu and Tai Chi. Over the years Wushu has developed from a combat style into a dynamic performance-orientated art. It emphasizes speed, balance, coordination and presentation, resulting in athletic and aesthetically powerful competitive sport. In China, Wushu is a way of life and an integral part of Chinese culture. It is practiced by people of all ages and backgrounds for self-defense, health and mental discipline.

Finally, the petitioner submitted a letter from [REDACTED], [REDACTED] of America. [REDACTED] stated:

It is our opinion that [the beneficiary] has culturally unique martial arts skills and all his performances are culturally unique. All events he attended or will attend are cultural unique in nature, and all activities are appropriate for P-3 petition. He is well qualified as Martial Arts Instructor/Performer. We therefore have no objection to the USCIS's approval of this P-3 visa petition.

As a well-known martial artist from world-famous Shaolin Temple, [the beneficiary] was invited as a guest performer of the [International Martial Arts Tournament] this year. I made this decision based on many strong recommendations from other martial arts masters. He did a very good job performing various Shaolin Kung Fu skills and movements, and made tremendous contributions to the success of the tournament.

As the event chair of the tournament, I very much aware of the unique skills and expertise that [the beneficiary] excels in the field of Chinese Martial Arts. I believe he will make great contributions to the martial arts community and definitely will benefit our country.

The director found that the testimonial evidence did not satisfy the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A) because the evidence submitted failed to establish that the persons providing letters are recognized experts in the field, and failed to specify whether the beneficiary has skills in performing, presenting, coaching or teaching a unique or traditional art form. Further, the director found that the beneficiary "has skills and experience in athletic, competitive and sporting activities" rather than in an artistic endeavor. The director noted that all of the events in which the beneficiary has participated appear to be athletic competitions and do not establish his credentials as an "artist or entertainer."

On appeal, counsel asserts that the director erred by determining that the submitted letters do not meet the regulatory requirements. Counsel states:

These experts are President and/or Chief Coach of various martial arts schools in the San Francisco Bay Area. All of these letters contain the job title and a detailed description of the qualifications of the experts. And all the letters were printed on the official letterhead of these martial arts schools.

Upon review, we agree with the director that the letters submitted fail to satisfy the requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). While we do not doubt the beneficiary's skills as a martial arts athlete, coach or judge, we note that none of the letters attests with any specificity to the cultural or traditional elements of the beneficiary's performances or instruction 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.

We further note that, while the authors of the letters discussed their own credentials, the petitioner failed to submit evidence to establish that they are "recognized experts" in the beneficiary's field as required by the plain language of the regulation. 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 testimonial letters 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.

While [REDACTED] does offer some explanation of Wushu as "an important component of the cultural heritage of China," he does not attest with specificity to the culturally unique skills of the instant beneficiary. Further, he fails to identify what makes Chinese Wushu, and the specific form of Wushu practiced by the beneficiary, unique from the form of the sport that is practiced worldwide and governed by [REDACTED] the international governing body of the sport. [REDACTED] assertion that the beneficiary is "a leading and key member of the world-renowned Shaolin Warrior Monks" is not corroborated by any supporting evidence, and the unique cultural elements of the beneficiary's skills have not been explained with any specificity. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

Overall, the evidence fails to establish the manner in which the authors gained knowledge of the beneficiary's skills, fails to establish the credentials of the authors, and fails to reference any culturally unique aspects of the beneficiary's Kung Fu performances.

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>2</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.'").

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<sup>2</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).

While the AAO acknowledges that Kung Fu or Wushu 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, testimonial evidence submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performances. 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).

*2. 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 *Wikipedia* articles on "Chinese martial arts" and "Shaolin Kung Fu" and the results of a Google search for the term [REDACTED]. We note that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>3</sup> With respect to the Google search results, we emphasize that it is the petitioner's burden to submit published materials that meet this evidentiary criterion. USCIS is not obligated to conduct a search of the Internet for evidence that might meet the petitioner's evidentiary burden. Regardless, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary or group and their individual performance of the claimed culturally unique art form. The petitioner did not submit any published materials pertaining to the beneficiary.

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<sup>3</sup> See also a copy of the online content from [http://en.wikipedia.org/wiki/Wikipedia: General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on June 6, 2011, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Counsel's broad assertion that "Chinese martial arts . . . is culturally unique to China," cannot be accepted in lieu of actual documentation that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petition may not be approved as the petitioner has not submitted evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

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

The director concluded that the petitioner failed to submit evidence that all of the beneficiary's performances or presentations would be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

The director emphasized that the petitioner did not provide an itinerary listing any artistic events or productions. Rather, the director noted that the petitioner indicated that its primary focus is to teach and train students in a wide variety of traditional Chinese martial arts and other modern self-defense techniques, and that the beneficiary's primary duties would be teaching martial arts classes and coaching the petitioner's competitive and event teams.

The director determined that the petitioner failed to identify any events at which the beneficiary would perform as an artist or entertainer, and failed to establish that the types of classes held at the petitioner's school are associated with a culturally unique form of artistic expression.

On appeal, counsel has made no specific objection or response to the director's finding that the petitioner failed to establish that all of the beneficiary's performances or presentations would be culturally unique events. Counsel alleges that the director's decision was generally lacking in any common sense or any understanding of the nature of Chinese martial arts.

Upon review, the AAO concurs with the director's determination that the evidence submitted fails to satisfy the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(C).

First, the petitioner failed to establish that the beneficiary's performances are culturally unique by submitting evidence to meet the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A) or 8 C.F.R. § 214.2(p)(6)(ii)(B). For this reason alone, the AAO cannot conclude that all of the beneficiary's performances or presentations would be culturally unique events.

In addition, we note that, based on the petitioner's representations, it is evident that the beneficiary will spend the majority of his time teaching martial arts to students at the petitioner's school, and coaching its competitive martial arts teams. The "events" in which the beneficiary will primarily participate are daily martial arts classes for students of various levels. The culturally unique aspects of the beneficiary's instruction and coaching responsibilities have not been discussed in the record, and it has not been established that the petitioner's martial arts school is a culturally unique arts program. Although the petitioner indicates that the beneficiary will

participate in various cultural events in the community, it failed to submit an itinerary or any other information describing the nature of such events.

Again, the petitioner cannot establish the beneficiary's eligibility as a culturally unique artist or performer simply by claiming that he will be performing traditional Chinese martial arts and establishing that he was trained in the discipline in China. The petitioner must establish that the instant beneficiary's performances, and the specific artistic or entertainment events for which his services are sought, 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 the "Chinese Shaolin Kung Fu tradition" are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

### **III. Prior Approvals and Conclusion**

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 beneficiary under this section of the Act, the petitioner must submit evidence that 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), 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 has approved prior petitions granting the beneficiary P-3 classification as a culturally-unique artists or entertainers for other U.S. organizations. Each nonimmigrant petition filing is a separate proceeding with a separate record 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). The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petitions were approved based on evidence similar to that contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the petitioner's request to amend and extend the beneficiary's status.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions,

USCIS does not have any authority to confer an immigration benefit when a petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.