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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**

dg

DATE: JUN 24 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiaries:

[REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 employ 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 coming to the United States to perform under a culturally unique program. The petitioner states that it operates a martial arts production, training and performing company. It seeks to employ the beneficiaries as martial artists for a period of one year.

The director denied the petition, concluding that the petitioner: (1) failed to provide evidence to establish that the beneficiaries possess culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B); and (2) failed to submit a written consultation from an appropriate labor organization.

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 the evidence submitted was more than sufficient to establish that the beneficiaries possess culturally unique skills in Chinese Shaolin Kung Fu. Counsel further asserts that there is no appropriate labor organization in the field of martial arts in the United States, and that the petitioner submitted a consultation from the American Guild of Variety Artists (AGVA) as a substitute. 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)(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 November 12, 2009. The petitioner seeks to employ the two beneficiaries as Martial Artists. The petitioner indicates that the beneficiaries "have been performing culturally unique Wushu for a substantial period of time.

The petitioner submitted a "contractor agreement" indicating that the beneficiaries will "participate and perform on [the petitioner's] series productions." The beneficiaries agree that they will each receive \$10 per hour for rehearsals and between \$100 and \$400 for performances, as well as "\$15/hour as martial arts instructors in [the petitioner's] martial programs at [the petitioner's] center."

The petitioner submitted a tentative "Schedule of Performance Events for 2010" for the beneficiaries. The schedule includes a

Many of the events are preceded by a one day rehearsal or practice. All events are scheduled between

The petitioner also submitted its martial arts class schedule, indicating that the petitioner's school offers classes and lessons six days per week. The petitioner submitted documentation regarding the martial arts background of both beneficiaries, as well as a consultation from the indicating that the beneficiary group "meets the current regulations" in the P-3 visa category.

A. The Beneficiaries' Culturally Unique Skills

The first issue to be addressed is whether the petitioner established that the beneficiaries possess 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 beneficiaries' performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiaries' work or other published materials.

1. Affidavits, testimonials or letters from recognized experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill.

The petitioner submitted two letters in support of the petition. [REDACTED] of [REDACTED] stated:

It is my opinion that [the beneficiaries] indeed have authentic skills in performing, presenting, coaching and teaching Kung Fu. My opinion is based on my knowledge of [the beneficiaries'] experience, mainly their training and performance of authentic Shaolin Kung Fu.

The most important factor I considered in determining whether [the beneficiaries] have authentic Kung Fu skills is their professional training and coaching. [The beneficiaries] received systematic and professional training of Shaolin Kung Fu including various boxing (fist) skills and 18 types of weaponries of Shaolin at [REDACTED] one of the most prestigious martial arts academies in [REDACTED]

[REDACTED] states that his opinion is further based on the beneficiaries' "amount of practice and performances." He provides a detailed summary of each beneficiary's training and achievements in Chinese martial arts. He noted that both beneficiaries "practice Shaolin boxing, which a culturally unique and traditional type of Kungfu." In this regard, [REDACTED] stated:

In the Ming and Qing Dynasties, there were a variety of boxing (fist) styles. In general, they were divided into two main types: Out Fist and In Fist. The Out fist is to take the initiative and attack; the In Fist is to stay still and take the defense position. In fact, the Shaolin style of boxing is a combination of dynamics and stillness, with the strategies of both offence and defense, and the strength and gentleness rally around each other. Shaolin Kung Fu's characteristics are subtle, stretchy, flexible, rapid and fierce, strong, powerful, simple and the fist punches form a line. The fist should carry out on a straight line regardless of advance or retreat, rise and fall, turning point, and various changes.

Shaolin Kungfu requires that when the body rises, it is horizontal (means front side), when the body falls it is straight (means on the side). To defense, the body goes in and out by rolling. The arms then are curved but not curved, straight but not straight (it actually means when the fist quickly reaches out for its punching, it moves back rapidly).

[The beneficiaries] are formally trained in Shaolin Kung [sic]. Their achieving, performing, presenting and coaching in this traditional style of Kungfu makes me to conclude that their skills in Kung Fu are authentic.

The petitioner also submitted a letter from [REDACTED] of [REDACTED]. [REDACTED]'s letter is similar, and in some instances, identical in content compared to the letter from [REDACTED]. For example, the letter includes the passage quoted above regarding the body mechanics involved in Shaolin boxing, as well as a similar summary of each beneficiary's qualifications in the martial arts. [REDACTED] states:

My experience provides me with a thorough understanding of what factors indicate the authenticity of a martial artist's skills in Kung Fu. The factors include skills in professional training, coaching of Kung Fu, and the amount of practice and performances of Kung Fu. Upon reviewing all these factors, as they related to [the beneficiaries' experience], I conclude that the above two masters, practice, perform, present and coach authentic Kung Fu.

On December 15, 2009, the director issued a request for additional evidence ("RFE") in which she instructed the petitioner to submit evidence of authenticity of Culturally Unique Skills in the form of affidavits, testimonials or letters from recognized experts attesting to the authenticity of the alien's or the group's skills in performing presenting, coaching or teaching the unique or traditional art form. The director advised that the petitioner should provide the credentials of the expert and the basis of his or her knowledge of the alien's or group's skill.

In a response dated January 19, 2010, the petitioner re-submitted the letters from [REDACTED] noting that both experts "indicate the members of the beneficiary group have authentic skills in performing, presenting, teaching and coaching Shaolin Kung Fu." The petitioner emphasized that "many of the forms practiced in the United States are not authentic unique systems of kung fu," but noted that the letters establish that the system performed, presented, taught and coached by the members of the beneficiary group is culturally unique.

The director denied the petition on October 20, 2010. In denying the petition, the director found that the testimonial evidence did not satisfy the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A). Specifically, the director noted that the letters from [REDACTED] "indicated that both beneficiaries are well trained and highly skilled in martial arts," but "do not address the cultural uniqueness of the beneficiaries' skills." The director further emphasized that two letters were not given full evidentiary weight because both letters appeared to be written from a "similar template."

On appeal, counsel states:

Both Grand Master [REDACTED] and Grand Master [REDACTED] are famous Shaolin Kung Fu masters, they both have more than 20 years of experience in traditional Chinese martial arts.

Since both of them are originally from China, they cannot speak or write fluent English. The letters submitted were written by other American people, who has [sic] translated the letters from English to Chinese, to the [REDACTED], who then agreed to sign these English letters. Even though these two letters were written from a similar template, both have been acknowledged and endorsed by the two [REDACTED]

The petitioner submits two additional testimonials in support of the appeal.

Upon review, we agree with the director's determination 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 beneficiaries' abilities as martial artists, we note that neither 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 of Kung Fu and Wushu that are practiced worldwide. Both letters include a detailed description of the body mechanics involved in Kung Fu, but do not comment on the cultural uniqueness of the specific boxing style of Kung Fu performed by each beneficiary. The unique cultural elements of the beneficiaries' 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).

We further note that, while both authors discussed their own credentials, the petitioner failed to submit evidence to establish that they are "recognized experts" in the beneficiary's field. The petitioner is required to "give the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill," pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Both testimonials are from owners 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 beneficiaries' skills.

Overall, the evidence fails to establish the manner in which the authors gained knowledge of the beneficiaries' 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.¹ 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,

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).

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 petitioner indicates for the first time on appeal that the persons providing letters are not native English speakers and therefore signed a template letter written in English, which was translated for them. Based on this claim, neither individual appears to have had any input into the contents of his letter, and, as noted above, the letters do little more than confirm the beneficiaries' martial arts credentials and provide technical information regarding Kung Fu fist methods, from an unknown source. If the petitioner seeks to obtain an expert opinion letter from a non-English speaker, it would be preferable to obtain a letter written by the expert in his native language and accompanied by a certified English translation. Regardless, the letters were deficient for the reasons discussed above, and are insufficient to establish the beneficiaries' eligibility.

While the AAO acknowledges that Kung Fu is a Chinese martial art, simply establishing that the beneficiaries are skilled and well-qualified Kung Fu practitioners trained in China is not sufficient to demonstrate their eligibility for this classification. Here, the two letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiaries' performances.

On appeal, the petitioner submits two additional letters from presidents of U.S.-based Kung Fu schools. The petitioner was given an opportunity to supplement the record with letters from recognized experts prior to the adjudication of the petition and chose to re-submit the above-referenced letters from [REDACTED] which had already been reviewed by the director and found to be deficient. 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.

However, we note for the record that the new letters contain similar deficiencies as those submitted prior to the adjudication of the petition. The petitioner submits a letter from [REDACTED], who states that he is the president and head coach of [REDACTED] in [REDACTED]. He describes the beneficiaries as "world famous Kung Fu players and performers" who "have won many awards and honors in the field." [REDACTED] further states: "Having extensive experience in performing and teaching [the beneficiaries] have been much appreciated by the martial arts community in the [REDACTED]." Finally, he indicates that he has "full confidence in their ability to make significant contribution to the development of martial arts in the United States," and to "enhance the culture and the health of its people."

The second letter is from [REDACTED], president and chief coach of [REDACTED] in [REDACTED]. [REDACTED] states that the beneficiaries "studied Kung Fu when they were very young," and "performed and instructed Kung Fu at various activities and events." [REDACTED] states that he "personally attended several shows of them; their spectacular performance has demonstrated great speed, power, flexibility and inherent

difficulty." He further indicates that the beneficiaries have made "tremendous contributions to the field and they possess qualities of an outstanding Kung Fu master with extraordinary abilities."

These letters, like those submitted prior to the adjudication of the petition, fail to clearly establish the manner in which the authors gained knowledge of the beneficiaries' skills, fail to establish the credentials of the authors, and fail to reference any culturally unique aspects of the beneficiary's Kung Fu 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).

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.

In response to the director's RFE, the petitioner submitted an excerpt from [REDACTED] Counsel stated that "the book clarifies that the different systems [of Chinese martial arts] are defined by several things, including their histories, shared techniques and practice routines, and a 'unique principle or concept' at its core." Counsel asserted that the book provides evidence that "Shaolin Kung Fu is a 'unique' martial arts system due to its teachings having a long shared history, which began in the Shaolin Temple during the Ming and Qing dynasties."

On appeal, the petitioner submits the results of a Google search for the phrase "Chinese culture Shaolin Kung Fu." 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 beneficiaries or group and their individual performance of the claimed culturally unique art form. The petitioner did not submit any published materials pertaining to either of the beneficiaries.

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).

B. Consultation from an Appropriate Labor Organization

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

The petitioner submitted a consultation from the [REDACTED] which indicates that the two-member beneficiary group meets the requirements of the P-3 visa classification.

The director determined that the consultation "did not elaborate as to what evidence was evaluated and how the conclusion was reached in regards to the cultural uniqueness of the beneficiaries' skills, whether the events are cultural in nature, and whether the event or activity is appropriate for P-3 classification," pursuant to 8 C.F.R. § 214.2(p)(7)(v). The director further found that the petitioner did not submit a "no objection" letter from a labor organization.

Upon review, the AAO finds the letter from the AGVA to be equivalent to a "no objection" letter and will withdraw the director's conclusion that the petitioner has not satisfied the labor consultation requirement set forth at 8 C.F.R. § 214.2(p)(2)(ii)(D).

III. Conclusion

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he enter the United States solely to perform, teach, or coach under a program that is culturally unique. Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiaries under this section of the Act, the petitioner must submit evidence that the beneficiaries' form of artistic expression and 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) and 214.2(p)(6)(ii). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.