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

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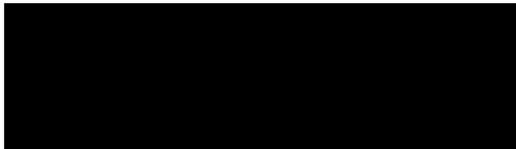
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [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:



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 Chinese kung fu school, filed this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner seeks to employ the beneficiary as a martial arts expert/instructor for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary possesses culturally unique skills; and (2) that all of the beneficiary's performances or presentations would be culturally unique events. The director further determined that the petitioner failed to submit a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D). The director questioned whether Chinese wushu and kung fu, as practiced and taught by the petitioner, throughout the United States and the rest of the world today, is a culturally unique art form.

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 "wushu is a unique form of artistic expression found only in Chinese culture." The petitioner asserts that its school's curriculum "is based on traditional Shaolin forms and techniques that have been passed down virtually unchanged through many centuries," and is not "an amalgamated style." The petitioner submits a brief and additional evidence in support of the appeal.

I. The Law

Section 101(a)(15)(P)(iii) of the Act provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

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

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

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

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

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

- (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or
- (B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
- (C) Evidence that all of the performances or presentations will be culturally unique events.

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines "arts" as follows:

Arts includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 14, 2009. The petitioner seeks to employ the beneficiary, a native of China, as a martial arts instructor/expert. The petitioner submitted evidence that the beneficiary has received the following awards in wushu competition: (1) [REDACTED]

The petitioner provided an excerpt from its web site, which describes its martial arts program as follows:

[The petitioner] instructs adults and children in Chinese Martial Arts that adheres to the Chinese Wushu Association guidelines, the group that sets the standards for international competition in Kung Fu and Tai Chi.

The core group of instructors at [the petitioner] . . . are graduates of the top Martial Arts schools in China. They all have spent years in the international competition circuit and have trained international teams in China, Indonesia, Korea and the United States.

The philosophy of the school is to create a community of students and instructors with the goal of nurturing and inspiring the best that Martial Arts offers. . . .

Students of [the petitioner] are trained in both internal forms (e.g. Tai Chi Chuan and Taijiquan) and external forms (commonly known as Kung Fu). Students begin by learning the most basic movements and develop into the advanced championship levels.

In a letter dated December 7, 2009, the petitioner provided the following introduction to Chinese martial arts:

Chinese martial arts, also known as *wushu* or *kung fu*, combine the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy. Considered as a system of hand-to-hand combat techniques and exercise, *wushu* is extremely rich in content and varied in form. Varying by region and sometimes even by village, clan, and monastery, *wushu* developed over the centuries into scores of schools or systems and hundreds of thousands of varying routines, each composed of differing offensive and defensive movements – kicks and punches, crouches and dodges, leaps and turns, that have been arranged into set patterns.

While many Chinese martial arts forms are keyed to the use of ancient weapons, such as swords, spears and cudgels, other forms are derived from the philosophical interplay between human beings and the natural world, imitating the movements of animals such as the praying mantis, snake or tiger. Most Chinese martial arts forms may viably be use[d] in hand-to-hand combat,

while other forms, such as the well-known *Taichi Chuan*, develop the spirit and mind as well as the physical body. Although Chinese martial arts may be considered a competition sport, both experienced practitioners and the untrained spectator will appreciate the artistry, beauty and physical abilities involved in performing its difficult routines and movements.

The petitioner further stated that "by presenting Chinese martial arts performances on behalf of the school in various scheduled events, it will further the understanding and development of Chinese martial arts in the United States." The petitioner provided an itinerary listing 13 kung fu and wushu demonstrations and performances scheduled for 2010, descriptions of the proposed events, as well as copies of event flyers for several of the events, which include Chinese New Year celebrations, a Lantern Festival, a China Day Parade, and an "East Meets West Martial Arts Festival." The petitioner indicated that "between the event intervals, the beneficiary is scheduled to teach Chinese martial arts" at the petitioner's school and other locations for the duration of his employment.

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.

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 provided letters from [REDACTED], the founder and president of Championship [REDACTED] and from [REDACTED] President of [REDACTED] in Belmont, California. While each author describes his own individual achievements in the Chinese martial arts field, the letters are otherwise identical in language and content. Both [REDACTED] and [REDACTED] state that they will "explain the cultural uniqueness of the events which [the beneficiary] will be performing in," and then proceeded to provide an identical listing and explanation of the events listed on the itinerary. With respect to the authenticity of the beneficiary's skills, each individual states:

[The beneficiary] is a unique Chinese martial arts expert and his Kung Fu skills are culturally unique. I base my opinion on his skills in Chinese martial arts and the award certificates from Chinese national competitions presented. [The beneficiary's] skills in this field provide that he is a qualified and authentic martial arts expert.

Both authors state that they are able to attest to the authenticity of the beneficiary's skills in performing in a culturally unique program "after reviewing the references and documents presented."

On January 8, 2010, the director issued a request for additional evidence in which she requested that the petitioner provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing, presenting, teaching or coaching the unique or traditional art form. The director also requested the credentials of the expert, including the basis of his or her knowledge of the beneficiary's skill. In response, the petitioner submitted a letter from [REDACTED] dated January 19, 2010 which was identical to the letter submitted at the time of filing.

In determining that the petitioner failed to meet this evidentiary requirement, the director emphasized that the opinion letters are "exactly the same, word for word, with regard to the beneficiary's skills." The director also noted that [REDACTED] martial arts school, Championship Martial Arts Academy, based on the evidence submitted, is closely associated with the petitioning organization. For these reasons, the director found that the letters had limited probative value. Furthermore, the director found that neither of the letters attests with any specificity to the cultural or traditional elements of the beneficiary's performance or coaching methods, or how the beneficiary's specific form of Chinese martial arts is "culturally unique."

The AAO agrees with the director's conclusion that these letters are both lacking in probative value and specificity with respect to the beneficiary's culturally unique skills. Further, the AAO notes that the persons providing testimonial evidence have not fully established the basis of their knowledge of the beneficiary's skill. Both authors indicated that they have reviewed "the references and documents presented," and vaguely suggested their awareness of "his skills in Chinese martial arts." While it appears that [REDACTED] and [REDACTED] are aware of the beneficiary's awards in national Wushu competitions in China, the AAO notes that these awards are issued by the "General Administration of Sport of China." According to the evidence submitted, Wushu is a sport with an international governing body (the International Wushu Federation). Wushu sporting events are held worldwide at the national, continental and world levels. The beneficiary's awards confirm the beneficiary's success as a competitive wushu athlete in China. The letters do not explain how receipt of such awards constitutes evidence that the beneficiary possesses a culturally unique skill.

Finally, as emphasized by the director, the verbatim repetition of entire paragraphs indicates that the language in each letter is not the author's own and further detracts from its probative value. Overall, the letters submitted at the time of filing and in response to the request for evidence fail to establish the manner in which the authors gained knowledge of the beneficiary's skill and fail to reference any culturally unique aspects of the beneficiary's kung fu or wushu performance.

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,

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

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.'").

The petitioner submits two additional testimonials in support of the appeal. [REDACTED], head coach of [REDACTED] provides a letter dated March 6, 2010. [REDACTED] states his qualifications as a former competitive wushu athlete and [REDACTED] and expresses his opinion of the authenticity of the beneficiary's skills as follows:

I have known [the beneficiary] for many years through his participation in Wushu competitions and performances in China. I am also familiar with his teaching ability through his work as a coach for [REDACTED]. I highly recommend [the beneficiary] because he is not only a very skilled martial arts, but also a wonderful teacher. He uses an extremely detailed and precise form of teaching that only the most knowledgeable and dedicated Wushu coaches can provide.

The United States has very few instructors with the qualifications to correctly teach Wushu and transmit its unique cultural value to students. [The beneficiary] is especially talented in the traditional Shaolin style, and I sincerely believe that he has the capacity to bring the best and most pure form of this ancient Chinese art to American students.

The petitioner also submits a letter from [REDACTED] president and chief instructor of [REDACTED] in [REDACTED] provides a summary of his experience as a martial arts practitioner and teacher. With respect to the beneficiary, he states:

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).

I have met [the beneficiary] at numerous martial arts events, competitions and performances over the years. He is a very accomplished Wushu athlete and coach. He participated in [REDACTED] [REDACTED] and won first place in the youth male division Broadsword event. In 1998, he won first place in men's Broadsword at the [REDACTED] [REDACTED]. In 1999, he won [REDACTED] [REDACTED]. [The beneficiary's] accomplishments led him to a position as a coach for the [REDACTED] where he was personally responsible for bringing out the best in the bright young athletes of that team. Many of [the beneficiary's] students have successfully competed in national Wushu competitions as a result of his tireless coaching.

In light of his tremendous accomplishments and contributions to the field of Wushu, I believe [the beneficiary] is a rare and outstanding athlete and coach.

Upon review, we find these letters overly generalized in terms of describing how wushu, and the beneficiary's specific skills in the martial arts, qualify as a culturally unique art form. While we do not doubt the beneficiary's abilities as a wushu athlete and coach, we note that neither letter attests with any specificity to the cultural or traditional elements of the beneficiary's coaching, instruction or performance. [REDACTED] asserts that the beneficiary is qualified to "correctly teach Wushu and transmit its unique cultural value to students." However, he fails to identify what, specifically, makes the beneficiary's method of teaching "correct," nor does he elaborate with respect to its "unique cultural value." [REDACTED] also states that the beneficiary is "talented in the traditional Shaolin style." Merely identifying the beneficiary's style as "traditional" is insufficient; 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). Furthermore, the evidence of record provides no corroborating documentation of the beneficiary's training or qualifications apart from the above-referenced awards in national wushu competitions. As noted above, the awards demonstrate the beneficiary's skill as a competitive wushu athlete, but do not establish that wushu is culturally unique, nor provide evidence of the beneficiary's skill in the "traditional Shaolin style."

[REDACTED] does not state that the beneficiary's wushu skills are culturally unique, but rather discusses his athletic and athletic coaching accomplishments. Therefore, his letter also fails to address the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching the unique or traditional art form.

While the AAO acknowledges that wushu is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified wushu practitioner and coach trained in China is not sufficient to demonstrate his eligibility for this classification. Here, the letters submitted in support of the petition cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance, and therefore, the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A) has not been met.

B. *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 an regarding Chinese martial arts from *Wikipedia* and several brief articles regarding previous events held by the petitioner's school. However, the regulation requires the petitioner to submit evidence that the *beneficiary's* performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. The petitioner has not submitted any published materials that mention the beneficiary, and thus it has not submitted evidence that satisfies the plain language of this regulatory criterion.

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

The director determined that the beneficiary's proposed performances or presentations as a martial arts instructor/performer will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). The director acknowledged that the beneficiary "will perform in a number of cultural events," and will teach kung fu, wushu and tai chi to students at the petitioner's school.

The director discussed at length the issue of whether Chinese martial arts, or wushu, is a culturally unique art form. The director discussed the information provided by the petitioner with respect to the history of Chinese martial arts, noting "wushu" encompasses a broad and varied category of martial arts. The director emphasized that "it is unclear whether Wushu, as taught and practiced throughout the United States and the rest of the world today, is still 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."

This issue is relevant as the record indicates that the majority of the beneficiary's time in the United States will be spent teaching and coaching wushu and kung fu to the petitioner's students. The beneficiary will also participate as a performer in Chinese cultural events, such as Chinese New Year celebrations and an Asian American Heritage Month event.

In a statement submitted on appeal, the petitioner states:

Wushu is a unique form of artistic expression found only in Chinese culture. Furthermore, the Wushu that we teach in our school in Naperville, IL is strictly modeled after the training that martial arts students in China receive. To demonstrate this, I have attached a detailed copy of our school's curriculum. The curriculum is based on traditional Shaolin forms and techniques that have been passed down virtually unchanged through many centuries. We organized these traditional forms into a belt system to help modern American students learn them, but the forms themselves are exactly the same as the ones that students in China would learn.

The petitioner also submits a letter from [REDACTED], a student at the petitioner's school. [REDACTED] states that the petitioner's curriculum "is based on the empty-hand and weapons forms of the Shaolin style which traces its roots over several centuries to [REDACTED]. He opines that kung fu "is nothing like

generic versions of [REDACTED]," and states that the petitioner's school "preserves the unique traditions and culture of Chinese Kung Fu better than any other school" in the petitioner's region.

The petitioner has provided no additional evidence regarding "traditional Shaolin forms and techniques" and how they qualify as "culturally unique" compared to other styles of wushu or Kung Fu. Furthermore, as noted above, the petitioner's own web site indicates that the school's curriculum "adheres to [REDACTED] guidelines," and notes that this group "sets the standards for international competition in [REDACTED]". Therefore, it appears that the petitioner strives to teach its students a standardized form of wushu according to internationally-recognized competition standards, rather than focusing on any culturally-unique or artistic aspects of the sport. The petitioner's website does not discuss any culturally unique or artistic aspects of its program. The petitioner does not claim to teach the ancient style of kung fu taught at the Shaolin Temple, nor does it otherwise claim to "combine the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy," in its day-to-day classes. The fact that wushu originated in China does not equate to a finding that all modern wushu programs continue to offer "culturally unique" activities.

In addition, it is reasonable to question whether coaching student athletes according to recognized competition standards falls within acceptable activities for a P-3 nonimmigrant. The AAO notes that section 101(a)(15)(P)(iii)(I) of the Act provides P-3 classification to aliens who perform as *artists or entertainers*, individually or as part of a group, or as an integral part of the performance of such a group. The term "arts" includes "fields of creative activity or endeavor" and includes, but is not limited to, fine arts, visual arts, and performing arts. *See* 8 C.F.R. § 214.2(p)(3).

Therefore, it is necessary to determine whether wushu as taught in the petitioner's school is a "creative activity or endeavor" such that the school's instructors could be considered "artists or entertainers" according to the regulatory definition of arts. As noted above, the petitioner describes wushu as a "competition sport" that requires a certain amount of artistry in performing the most advanced movements. However, the petitioner does not claim to operate an "artistic" or performance-oriented curriculum, but rather, an athletic one based on standard competition roles and guidelines. It has not been shown that the beneficiary will be "performing" or "presenting" as an artist or entertainer in teaching kung fu classes according to [REDACTED]. The AAO cannot conclude that the petitioner's daily martial arts classes are culturally unique events.

Again, the petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be teaching "Chinese martial arts" and submitting evidence that he competed successfully in wushu sports competitions in China. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment events for which his services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance across all events and activities is 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 martial arts" tradition are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that all of the beneficiary's performances or presentations will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

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 indicated that it was submitting [REDACTED]s and [REDACTED] advisory opinion letters to satisfy the requirement for a written consultation from a labor organization. In denying the petition, the director determined that, the regulations governing the P nonimmigrant visa classification contain "no provision for the substitution of an individual or group 'peer review' attestation in lieu of a labor consultation." The director noted that it is the petitioner's burden to establish that an appropriate labor organization does not exist, and that the petitioner had not met this burden.

The petitioner has not acknowledged the lack of an appropriate consultation as a basis for the denial of the petition or otherwise addressed this issue on appeal. Accordingly, the AAO affirms the director's determination and will dismiss the appeal for this additional reason.

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 beneficiary under this section of the Act, the petitioner must submit evidence that the beneficiary's form of artistic expression and 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) and 214.2(p)(6)(ii). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 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.