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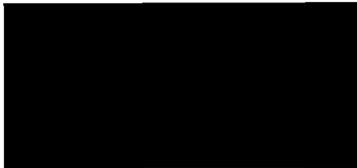
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

b9



DATE: **NOV 17 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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 extend the beneficiary's employment in the position of martial arts instructor/performer for a period of one year. The petitioner has employed the beneficiary in this position since November 2008.

The director denied the petition, concluding that the petitioner: (1) failed to provide evidence to establish that the beneficiary possesses culturally unique skills in a culturally unique style of artistic, expression, methodology or medium, 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. In denying the petition, the director found that the record did not support a finding that a martial art is a culturally unique artist or entertainer as contemplated by the statute and regulations governing the P-3 classification. Rather, the director found that the evidence shows that the beneficiary is skilled in a competitive athletic endeavor.

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, Wushu or Kung Fu 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 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.

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 November 15, 2010. In a letter submitted in support of the petition, the petitioner stated that the beneficiary is "a talented martial arts master" who is "highly skilled in various kinds of fighting skills and feats of Shaolin Kung Fu, such as sword, spear, fist, stuff [*sic*], and broadsword." The petitioner indicated that the beneficiary "has won various awards and honors in the martial arts field in the past few years."

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."

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. The petitioner offers martial arts classes to students of all levels six days per week. The petitioner's advertising materials indicate that the program offered provides healthy exercise, and improves coordination, strength and flexibility, physical stamina, discipline and confidence.

The petitioner explained that its primary focus is on "teaching and training students in a wide variety of traditional Chinese martial arts and other modern self-defense techniques, such as Tai Chi, Kung Fu, Spear, Sword, Stuff [*sic*], Broadsword, Fist and Kickboxing and so forth." The petitioner further indicates that it "strives to pass to

the traditions of Chinese culture associated with martial arts not only to its students, but also to the general public," by providing "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 letter dated December 22, 2010, counsel for 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 Kung Fu or Wushu) 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 Oakland. 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 competitor, performer and judge. These included six certificates and letters of appreciation for the beneficiary's participation as a performer in events such as Chinese New Year celebrations and similar demonstrations between 2007 and 2009, only one of which appears to have occurred during the beneficiary's two year-tenure with the petitioning organization. The petitioner also submitted the following:

- [REDACTED] thanking the beneficiary for judging the 15th Annual Chinese Martial Arts Tournament in March 2007;
- Tournament Judge certification confirming that the beneficiary served as a judge at the [REDACTED];
- Certificate of Award issued by the Chinese Wushu Association indicating that the beneficiary was awarded "Outstanding Kung Fu Performer" at the [REDACTED];
- Certificate of Award issued by the [REDACTED] indicating that the beneficiary received 1st Place in Shaolin Qiankun Sword, in May 2005;
- Certificate of Award issued by the [REDACTED], Yantai, China, indicating that the beneficiary received First Place in Broadsword in July 2004;
- Certificate of Award issued by the Henan Province Sports Association certifying that the beneficiary was awarded first place in staff at the [REDACTED];

- Certificate of Award issued by the Henan Province Sports Association indicating that the beneficiary was awarded first place in double staff at the [REDACTED]
- Certificate of Award issued by the Henan Province Sports Association indicating that the beneficiary was awarded First Place in Free Style Competition, at the [REDACTED]
- Certificate of Award issued by the Shandong Province Wushu Association indicating that the beneficiary was awarded 1st place in Long Fist at the [REDACTED]
- Certificate of Award issued by the Puyang City Sports Association indicating that the beneficiary received first place in [REDACTED]; and
- Certificate of Award issued by the Puyang City Sports Association indicating that the beneficiary received [REDACTED]

Finally, the petitioner submitted the beneficiary's Wushu Dan certificate issued by the Chinese Wushu Association.

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 and the above-referenced certificates and awards as evidence of the beneficiary's culturally unique skills.

In a request for evidence ("RFE") issued on November 30, 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 a culturally unique form. In the RFE, the director noted that the beneficiary's awards were received as a result of his success in athletic competitions. The director observed that P-3 status is limited to artists and entertainers, and therefore emphasized that evidence submitted in response to the RFE should discuss any artistic aspects of Wushu and Kung Fu and document "the practice and performance of these martial arts in artistic events or productions rather than athletic type competitions." The director noted that such evidence should discuss Wushu and Kung Fu in terms of an artistic endeavor.

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], 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.

In the RFE, the director noted that the beneficiary's certificates and awards show that the beneficiary is skilled in Wushu or Kung Fu, but are inadequate to meet the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). Therefore, the director requested that the petitioner provide the required affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing, presenting, coaching or teaching the unique or traditional art form. The director also requested that the petitioner provide the credentials of the expert, including the basis of his or her knowledge of the alien's skill.

The petitioner's response to the RFE did not include any affidavits, testimonials or letters from recognized experts.

Therefore, the director determined that the petitioner did not submit evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). The director acknowledged the letter from [REDACTED], but noted that his brief statement is inadequate to support any assertion that the beneficiary possesses skills in a culturally unique style of artistic expression, methodology or medium. The director emphasized that [REDACTED] did not comment on the beneficiary's skills as an artist or entertainer, or on any culturally unique qualities of the beneficiary's skills.

Further, the director found "while Wushu or Kung Fu is a martial 'art,' the petitioner has not shown it to be a 'field of creative activity or endeavor.'" The director observed that the limited evidence in the record suggests that "the beneficiary has skills and experience in athletic, competitive, and sporting activities, and not in an artistic endeavor."

On appeal, counsel asserts that the director's decision is "illogical and senseless," and reflects a lack of understanding of Chinese Martial Arts, Wushu or Kung Fu despite the petitioner's submission of "hundreds of pages of documents."

The AAO agrees with the director that the sole letter submitted fails to satisfy the evidentiary 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, performer, coach or judge, the regulation 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."

conclusory opinion that the beneficiary is "well qualified as a Martial Arts Instructor/Performer" does not meet the requirements of this regulation.

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, the testimonial evidence submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performances.

Accordingly, the AAO concurs with the director's determination that the limited 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 "Chinese culture Shaolin Kung Fu." 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 (8th Cir. 2008).¹ 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.

¹ 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 November 10, 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).

The director also addressed the issue of whether the beneficiary will as an "artist or entertainer" as required by section 101(a)(15)(P)(iii)(I) of the Act. 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 Shaolin Kung Fu and Wushu, as practiced by the beneficiary and taught at the petitioner's school, can be classified as a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. The AAO agrees that the petitioner did not identify what makes Chinese martial arts, and the specific forms of Chinese martial arts practiced by the beneficiary unique from the forms or disciplines that are practiced in the United States and worldwide, nor did it identify how the beneficiary's discipline meet the regulatory definition of "arts" applicable to the P classification. *See* 8 C.F.R. § 214.2(p)(3)

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 "the primary 'events' in which the beneficiary will participate are daily martial arts classes for students of various levels" and that "he will not be 'performing' or 'presenting' as an artist or entertainer." The director found insufficient evidence to support a conclusion that a class held at the petitioner's school is a culturally unique event.

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. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 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 artist or entertainer for the petitioner and for at least two 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 approvals by denying the petitioner's request to 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.