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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



Dq

DATE: **FEB 14 2012** 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, a Chinese martial arts school, filed this 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 in a culturally unique program. The petitioner seeks to employ the beneficiary as a martial arts instructor/performer for a period of one year.

The director denied the petition based on the petitioner's failure to submit a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D).

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 that "there is no appropriate labor organization in the field of Chinese martial arts in the United States." Counsel requests that the AAO reconsider the denial and adjudicate the petition based on the evidence of record.

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)(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.

II. Discussion

The sole issue addressed by the director 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).

At the time of filing, the petitioner submitted an "advisory opinion consultation" from [REDACTED] Arts of America, a non-profit organization located in California. [REDACTED] opined that the beneficiary "has culturally unique martial arts skills and all her performances are culturally unique." She further stated that the events in which the beneficiary will participate in the United States are culturally unique and appropriate for P-3 classification. [REDACTED] indicated that her organization has "no objection" to the approval of the P-3 petition.

The director issued a request for additional evidence on December 3, 2010. The director advised the petitioner there is no provision that would allow USCIS to accept an individual or peer group advisory opinion letter in lieu of a written consultation from a labor organization. The director informed the petitioner that a consultation from the American Guild of Variety Artists (AGVA), whose area of expertise includes "variety performers working at private parties and special events," would meet the requirements of 8 C.F.R. § 214.2(p)(7).

In a response dated December 29, 2010, counsel stated that he submitted a request for a consultation to the AGVA, but had not received a response as of that date.

The director denied the petition on January 18, 2011 based on the petitioner's failure to submit the required written consultation from an appropriate labor consultation.

On appeal, counsel asserts that, "as indicated on the original petition, there is no appropriate labor organization in the field of Chinese martial arts in the United States." Counsel requests that the AAO waive the consultation requirement and reconsider the decision.

Upon review, counsel's assertions are unpersuasive. The petitioner has neither submitted the required written consultation from a labor organization, nor established that an appropriate labor organization does not exist, and therefore has not satisfied the consultation requirements set forth at 8 C.F.R. §§ 214.2(p)(2)(ii)(D) and 214.2(p)(7)(i)(A).

Contrary to counsel's assertions on appeal, the petitioner did not indicate on the original petition that no appropriate labor organization exists. Moreover, the director advised the petitioner that there is in fact an appropriate labor organization, AVGA, and that a favorable consultation from AVGA would satisfy the petitioner's evidentiary burden.

Although counsel claimed in response to the RFE that the petitioner had requested an AVGA consultation, the record contains no evidence that counsel or the petitioner actually submitted the request, nor any evidence of a response from AVGA. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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).

Where, as here, an appropriate labor organization exists, the petition may not be approved without the required written consultation. 8 C.F.R. § 214.2(p)(7)(i)(A). Accordingly, the appeal will be dismissed.

A remaining issue in this matter is whether the petitioner has submitted evidence to satisfy the evidentiary requirements for this visa classification as set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Specifically, 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized

experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill.

The petitioner did not submit any evidence to satisfy this criterion. The record contains the above-referenced letter from [REDACTED] of the Chinese Performing Arts Association. As discussed, this letter was submitted to satisfy the regulatory requirement to provide a written consultation from a labor organization, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), and indicates that this organization has no objection to the approval of the P-3 petition. The petitioner has not submitted affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiaries' skills in performing, presenting, coaching or teaching the unique or traditional art form.

The record does not contain sufficient evidence that could, in the alternative, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), which requires the petitioner to submit documentation that the beneficiaries' performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials. The petitioner has submitted two general articles regarding Chinese martial arts, including an article from *Wikipedia*. 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.

The petitioner's broad assertions that the beneficiary will perform her duties as a martial arts instructor/performer "under a culturally unique program" 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). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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 she shows 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.