

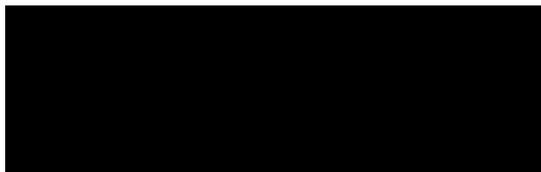
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D9



DATE: Office: VERMONT SERVICE CENTER

**MAR 26 2012**

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: SELF-REPRESENTED

**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, Vermont 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 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 a performing artist in a culturally unique program. The petitioner is self-described as a Chinese culture and performing arts center. It seeks to employ the beneficiary as a singer and teacher of Chinese folk song for a period of one year.

The director denied the petition, concluding that the petitioner was unable to provide requested corroborating evidence to demonstrate that the beneficiary would perform in the events listed in the submitted itinerary.

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 emphasizes that it is a non-profit organization that has been invited to perform in many venues in the United States, but does not typically sign contracts because it “is a performing company with an aim to promote Chinese performing arts.” The petitioner suggests that the denial of the petition for the grounds stated displayed an “ignorance of the whole context of our business,” and was “erred, unreasonable, bias and malicious.” 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)(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 first issue addressed by the director is whether the petitioner submitted evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(2)(ii)(C). The petitioner is required to provide an explanation of the nature of the events or activities, the beginning and end dates for such activities, and a copy of any itinerary for the events or activities.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 3, 2010. The petitioner, which claims to have three employees, indicated on Form I-129 that the beneficiary will be “singing and teaching Chinese folk song.” The petitioner indicated that the beneficiary will work at the petitioner’s address at 152-72 Melbourne Avenue, #3F in Flushing, New York, as well as at “theaters, libraries, schools and community center.” The petitioner stated that the beneficiary will work 20 hours per week at a weekly salary of \$250, and also receive \$200 for each performance. The petitioner requested a one-year petition validity commencing on August 12, 2010.

In a letter dated July 26, 2009, the petitioner stated that the beneficiary will be involved in the following activities and events:

[The beneficiary] will serve as an artistic instructor for our on going school programs and workshops. She will lecture on Chinese folk dance with on site demonstration. She will direct the rehearsals of our productions of Chinese folk dance musicals and play the leading roles in those plays.

In support of the petition, the petitioner submitted an itinerary of “Projected Major Cultural Events and Programs” for 2010-2011. The petitioner notes on its itinerary that it operates a daily, year-round music program, offered in the summer and after-school, as well as a summer-long “Chinese Opera, Magic Art, Music and Dance Training Program for Students at this center from Monday to Saturday.”<sup>1</sup> The itinerary lists a total of 35 events for the

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<sup>1</sup> The AAO notes that the itinerary includes a “comprehensive music and opera training program at this center, weekly workshops of Chinese performing arts, Chinese instrumental music, Opera, Acrobatic workshops for students and fans at [REDACTED].” The petitioner lists its address as [REDACTED]. The lease is a residential lease for a “private Apartment to live in and for no other reason.” The tenant is [REDACTED] and under the terms of the agreement, only [REDACTED], his spouse and his children may use the apartment. The petitioner submitted several photographs of a small room within an apartment, which includes a sofa, a desk with a computer, a television and several musical instruments. One of the photographs appears to depict a student receiving instruction in playing an instrument. The name of the petitioning entity appears on a placard placed on the door to the room. The AAO notes that the petitioners listed address is not amenable to hosting the activities noted above. The lease agreement also specifically restricts the tenant to residential use. This inconsistency casts doubt on the legitimacy of the employer/employee relationship and the organization. On appeal, the petitioner indicates that its address has changed to [REDACTED].

period between May 2010 and August 2011, including exact dates for events. The events include Chinese music, opera, dance, magic and acrobatics performances. The event locations include [REDACTED]

[REDACTED] in New [REDACTED], a high school auditorium, Greenwich Library, Chinese American Art Council, Brooklyn Library, and Chinatown Community Center in New York.

On October 5, 2010, the director issued a request for additional evidence ("RFE") in which he instructed the petitioner to provide, *inter alia*, the following: (1) evidence that the petitioning organization was or has been contracted to perform at all of the events listed in the itinerary, including letters from managers at each venue, along with promotional materials for the petitioner's listed performances; (2) evidence that the work lined up for the beneficiary is sufficient to allow the petitioner to compensate the beneficiary at the stated rate; (3) a copy of the lease agreement for the petitioner's office or center, along with photographs depicting the nature of the business, (4) evidence of the performances and lecture-demonstrations conducted by the petitioning organization in the last six months; and, (5) evidence that the present beneficiary or group qualifies as a culturally unique program.

In a response dated December 21, 2010, the petitioner submitted the following:

- A revised contractual agreement between the petitioner and beneficiary which was signed by the beneficiary on November 20, 2010. The petitioner indicated that the beneficiary will work at the petitioner's address at [REDACTED], performing services of Performing Artist and Instructor of Chinese Folk Music. The petitioner stated that the beneficiary will work 20 hours per week at a weekly salary of \$250, and also receive \$200 for each performance. The petitioner requested a one-year petition validity commencing on August 12, 2010.
- A copy of a Form 1099 for the tax year 2009 indicating that the petitioner paid the beneficiary \$2400 in wages.
- Copies of three signed checks from the petitioner to the beneficiary dated in July and August 2010.
- A copy of the petitioner's 2009 Form 990-EZ indicating that the petitioner's operating budget for 2009 was \$44,987 including \$26,639 in salaries to employees. The AAO notes that while the petitioner indicates on its Form I-129 that it currently employs 3 employees, United States Citizenship and Immigration Services (USCIS) records indicates that the petitioner has 13 approved I-129 non-immigrant petitions along with an approved Form I-

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York. The petitioner has not submitted a new lease agreement, photos of the premises or any additional evidence that the new location houses the petitioner or that it is suited for the activities of the petitioner.

140 Immigrant Petition with current validity dates. This inconsistency casts further doubt on the legitimacy of the employee/employer relationship.

As evidence of the Petitioners participation in past events, the petitioner submitted the following:

- Copy of an invitation letter between the petitioner and the Concord Chorus to be held on February 30, 2010, along with an invitation to perform at the [REDACTED] [REDACTED] on September 26, 2010. The first paragraph of the letter references the You-Zin-Chorus. The second paragraph, which is in a different font, specifically refers to the beneficiary, however, specific performances are not referenced. The AAO also notes that there are not 30 days in February, therefore, the validity of this performance date is questionable.
- An undated letter from the New York Vocal Artist Research Center, inviting the petitioner to perform at Shang Hai World Expo 2010 held on April 16, 2010 at New York Flushing Library. The petitioner also submitted a program for this event, however, it is not listed on the originally submitted itinerary.
- An undated letter from the New York Vocal Artist Research Center, inviting the petitioner to perform at Saratoga Springs Concert held on February 7, 2010 at Saratoga Springs Baptist Church. The petitioner also submitted a program for this event in which the beneficiary is listed as a featured performer.
- An invitation letter dated February 17, 2010 from the Dix Hills Chinese School requesting a performance from the petitioner for its “Welcome Year of the Tiger, Spring Festival Gala” tentatively scheduled for February 27, 2010.
- An invitation letter from New York University Student Council inviting the petitioner to perform at the China Light Spring Festival Evening Concert on February 1, 2010.
- Invitation letters from US-China Friendship Association inviting the petitioner to participate in [REDACTED] Headquarters in New York on November 30, 2009.
- Invitation letters from [REDACTED], requesting that the beneficiary perform at on October 17, 2009 at [REDACTED] [REDACTED] University on October 24, 2009. The petitioner also submitted a program for this event in which the beneficiary is listed as a featured performer.

With respect to upcoming events, the petitioner submitted several additional invitation letters, including: (1) a letter from [REDACTED] New York Vocal Artists Research Center, requesting that the beneficiary perform at the 2010 [REDACTED]

[REDACTED] (The AAO notes that this invitation letter specifically requests a troupe of 10 acrobats and does not reference the beneficiary.).

The petitioner also submitted copies of contracts that it has entered into securing venues for performances and rehearsals. There is no mention of the beneficiary in these documents.

Finally, the petitioner submitted a revised itinerary for the period of June 2010 to October 2011, to which it added many of the above-referenced events.

The director denied the petition on January 12, 2011, concluding that the evidence provided in response to the RFE “is not sufficient to show to USCIS you have contracted employment for the proposed itinerary of events for the beneficiary . . . for the period of time requested on the petition.” The director acknowledged that the petitioner provided invitation letters and one programming contract for events to be held during the first few months of 2011. However, the director noted that the petitioner has failed to submit evidence demonstrating that the intended itinerary in the past has been complied with or that future commitments for qualifying engagements had been confirmed. The director noted that the petitioner “. . . failed to demonstrate that the work and position of the beneficiary is solely to perform, teach or coach under a commercial or non-commercial program that is culturally unique.”

In addition, the director noted the lease agreement the petitioner submitted is for a residential apartment, which “brings to question the viability of your company and the proposed performances of the beneficiary.”

On appeal, the petitioner disagrees with the director’s conclusion that the petition failed to document its upcoming performances. The petitioner states:

Please note that [the petitioner] is a non for profit organization. We have been invited to perform in many venues in the U.S., on many occasions. We normally do not sign contracts as we are a performing company with an aim to promote Chinese performing arts, not for profit purpose. As further evidence of [REDACTED] services as a Performing Artist in Chinese folk music, we submit copies of various invitation letters address to our company in attention to [REDACTED]

The Service denied the petition because the evidence is not sufficient to show USCIS we have contracted employment for the proposed itinerary of events for the beneficiary. Also, the Service ignored the fact that our organization is a not for profit organization and we perform

regularly in schools and colleges, as well as libraries, and other cultural institutions. We have also been invited to give lecture-demonstrations at schools, colleges and cultural organizations throughout the New York and tri-state areas. In addition, we offer programs to educate school-age children in traditional Chinese folk arts and music. We give free lecture -demonstrations and classes for Chinese musical instruments, performing arts and other art forms. In Petitioner's view, the Service's ignorance of the whole context of our business is indeed erred, unreasonable, bias[ed] and malicious.

In support of the appeal, the petitioner submits the following:

- A letter dated December 15, 2010 from [REDACTED] Center, inviting the beneficiary to perform at "Night of Herald" on January 9, 2011 at Herald Mission Center in Flushing, New York.
- A letter dated April 21, 2010 from [REDACTED] inviting the beneficiary to perform at "2010 Chinese Art Festival Concert." The venue is not listed.
- A program from Yale Concert Band, "Ask the Sky and the Earth: A Cantata for the Sent-down Youth." The program is dated February 26, 2011 and lists the beneficiary as a featured artist.
- A playbill from Carnegie Hall listing the beneficiary as a performer. The included biography details the beneficiary's accomplishments as a performing artist and soloist, however it fails to mention her affiliation or employment with the petitioner.
- The petitioner also resubmitted documents that were previously submitted and discussed above.

Upon review, and for the reasons discussed below, the AAO will uphold the director's decision and dismiss the appeal.

First, the AAO concurs with the director's conclusion that the petitioner's failure to document that it has confirmed any of the events listed in the itinerary provided at the time of filing raises questions regarding the petitioner's ability to offer the beneficiary the terms of employment outlined in the petition. Although requested by the director, the petitioner has failed to document that its organization has performed or will perform at a single event listed on the itinerary submitted at the time of filing, which extends from May 9, 2010 until August 2011. The director specifically requested evidence to corroborate the information provided in the itinerary. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner has not established that many of the events listed in its initial itinerary have occurred or will occur.

The petitioner claims to provide year-round instructional programs, including after-school and summer programs. According to the itinerary, summer programs are held at the petitioner's "center," and the petitioner has also stated that the beneficiary will "serve as an artistic director for our ongoing school programs and workshops." The petitioner's center-based and school-based instructional programs have simply not been documented. 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)).

As noted above, when asked to provide a lease agreement for its place of business, the petitioner submitted its artistic director's residential apartment lease. The beneficiary would clearly not be teaching Chinese dance classes in an apartment in which any commercial use is prohibited, nor is it reasonable to believe that she would otherwise be working in [REDACTED]. The petitioner has not submitted evidence such as agreements or letters from the hosts of the petitioner's purported "school-based" programs or otherwise established the existence of such programs. Therefore, the petitioner has not established that it has work available for the beneficiary as a vocal instructor.

Finally, we note that the petitioner claims to employ only three people, which raises further questions regarding its ability to provide the extensive cultural and arts programs described in the petition as noted above. While the petitioner has submitted some credible evidence of its involvement, or the involvement of its director, in Chinese cultural events in the past, the AAO concurs with the director's conclusion that the petitioner has not established that the beneficiary would be providing the proposed performance or teaching services as described in the petition. Accordingly, the petition will be dismissed.

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). The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)."

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 at 1043.

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.