U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

D9

[redacted]

DATE: MAR 2 6 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 the nonimmigrant petition seeking to employ 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 operates an Afghan restaurant and catering business. It seeks to employ the beneficiary in the position of International Cultural Educator/Afghan Culinary Specialist for a period of three years. [1]

The director denied the petition, concluding that the petitioner: (1) failed to demonstrate that the beneficiary possesses skills in a culturally unique art form pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B); and (2) failed to establish that he will be performing, teaching or coaching under a program that is culturally unique. In denying the petition, the director emphasized that "simply producing culturally authentic dishes for a restaurant or catering business is not sufficiently qualifying for this classification."

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 the preparation of ethnic food can be classified as "a style of artistic expression, methodology or medium" that is encompassed by the regulatory definition of "culturally unique." Further, counsel asserts that the petitioner provided evidence of more than 20 events that would showcase the beneficiary's skills as an Afghan chef, while the petitioner's restaurant itself is considered a "cultural landmark" that administers a culturally unique program. Accordingly, counsel asserts the petitioner satisfied all requirements for P-3 classification

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

[1] The regulation at 8 C.F.R. § 214.2(p)(8)(iii)(C) provides that an approved P-3 petition for an artist or entertainer shall be valid for a period of time determined by the Director to be necessary to complete the event, activity or performance for which the P-3 alien is admitted, not to exceed one (1) year.

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, New Jersey, seeks to employ the beneficiary in the position of International Cultural Educator and Afghani Culinary Specialist. The petitioner stated on the Form I-129 that the beneficiary "will impart his culturally unique and highly-specialized knowledge in the Afghan culinary arts by supervising and directing [the petitioner's] chefs and other staff in the proper preparation and presentation of cuisine in various unique Afghan cultural styles."

The petitioner stated in its letter dated May 10, 2009 that the proposed position "demands a culturally unique individual to provide artistic performance and presentation of authentic Afghan cuisine by designation combined with religious and cultural knowledge of the Afghan people and their dietary rituals." The petitioner explained that "culturally unique skills and knowledge of Afghan culinary arts are used to educate and teach people in the U.S. in variety of Afghan dishes all flavored with a delicate and complicated use of spices and staple ingredients."

The petitioner is self-described as a "local legend" and "unique specialty restaurant specializing in dishes such as lamb, chicken and beef kebabs, Chalow, Palow, Sambosa and Muntoo. In addition, the petitioner states that it provides large-scale catering services for religious and cultural events such as weddings, rites of passage for young people, "important occasions such as Eid Al-Fitr, Eid al Adha, Mawleed Al-Nabi and other public functions including Afghan Independence Day." The petitioner stated that due to its "shortage of appropriate culinary artists," it has had to forego various catering opportunities. The petitioner noted that its existing staff "lacks experienced and in-house expertise in preparing authentic Afghan dishes on a large-scale basis."

The petitioner emphasized that the beneficiary "is specially trained in the preparation of Afghan cuisine in keeping with traditional, religious and ancient customary rites," and that he will impart his knowledge in the Afghan culinary arts "by supervising and directing [the petitioner's] chefs and other staff in the proper preparation and presentation of Afghani cuisine in various Unique Afghan cultural styles." The petitioner went on to discuss Afghanistan's history, the importance of food in Afghani culture, and a list of ingredients commonly used in the cuisine, such as cinnamon, cloves, nutmeg, cardamom, cumin, saffron, pistachio, almonds, coriander, garlic, onions, mint, leeks, vegetable oil, lemons, limes, and yogurt. In addition, the petitioner noted that "most Afghans have developed an ability to sense the correct proportions, which is culturally ingrained and in important element of the Afghan culinary arts."

The petitioner indicated that beneficiary has worked in culinary positions in two restaurants in Afghanistan since 1995, specializing in Kabuli Palow, Chalow, Sabzi Chalow, Chicken Kebab, Lamb Kebab, Kufta Palow, Mantoo, and Dashi. The petitioner further described his proposed role in the United States:

> [The beneficiary] will utilize his knowledge and abilities with regard to Afghan culture and cuisine in order to train and supplement [the petitioner's] under-chefs in various Afghan culinary arts. [The beneficiary] will also be engaged in presenting cultural and catering different varieties of unique Afghan cultural dining experiences to the public, through [the petitioner's] upcoming cultural and culinary events. . . . "

The petitioner's initial evidence included: newspaper reviews, menus, and advertisements for the restaurant; a schedule of proposed events for the period of requested employment; letters from the beneficiary's current and previous employer confirming that he has been working as a cook and chef specializing in Afghani dishes; and several testimonial letters.

A. The Beneficiary's Culturally Unique Skills

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 beneficiaries' performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through reviews or other published materials about the beneficiary's work.

1. Affidavits, testimonials or letters from recognized experts

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

The petitioner submitted several testimonial letters at the time the petition was filed. All of the letters were prepared in 2004 and none of them mention the beneficiary or his skills in performing, presenting, coaching or teaching a unique or traditional art form. The letters appear to have been prepared in support of a prior P-3 petition filed by the petitioning restaurant, and generally describe the restaurant and the authenticity of its Afghan cuisine.

In response to a request for evidence, the petitioner submitted a "consultation certification" from [redacted] indicates that he teaches comparative religion at Hofstra University and is affiliated with the [redacted], which "documents changes on the American religious and cultural landscape since passage of the 1965 Immigration Act." [redacted] states, in pertinent part:

> 4. My practical experience and publications, consonant with current academic literature on education and the social integration of individuals and sense of worth is heavily predicated on an understanding of religion/culture, history and origin – food is an important ingredient in that mix.

5. In this capacity, I am knowledgeable in Afghan Culinary and Cultural Arts and the unique and specialized knowledge of religion, culture and customs required to provide the American public with trusted performance and presentation of authentic Islam sanctioned cuisine and related cultural festival activities. These unique factors in Afghan Culinary and Cultural Arts are strongly influenced by long-established cultural aesthetics of religion and its manifestations in cuisine.

6. The Afghan people have had a long history of their race, ethnicity and religion/culture being marginalized in the West and most recently United States where there have been several violent bias crimes and incidents against people of Afghan/Muslim and perceived Afghan/Muslim decent [*sic*]. Only through vigorous educational efforts of both non-Afghan and Afghan Americans about Afghani and Muslim culture that inroads can made into the reduction of misconceptions and negative stereotypes surrounding Islamic and Afghan-American heritage.

7. [The beneficiary's] long culinary background includes correct Islamic preparation of halal meats and dishes, is necessary for this well-known ethnic Islamic eatery dedicated to traditional Afghan and Muslim cuisine. [The beneficiary], traditional chef and cultural educator, is very qualified to impart his unique and invaluable knowledge and skills that are a gustatory expectations [*sic*] for all practicing Muslims.

8. Appropriate prepared and served cuisine is a profound educational and cultural tool to educate both Afghan/Muslim and mainstream non-Muslim Americans who may, due to recent events have incorrect stereotypical cultural views. [The petitioning restaurant] offers all its patrons both Muslim and non-Muslim unique opportunities to savor and understand cultural Afghan and Muslim traditions.

The petitioner provided a copy of extensive resume and a 1998 *New York Times* article about titled

The petitioner's response to the RFE also included a letter from which operates a Japanese restaurant in Teaneck, New Jersey. notes that, based on his experience in the ethnic restaurant industry, he is "qualified to render an opinion that culturally unique skills of an experienced culinary specialist who was born in the home county [*sic*] of the cuisine would be required in order to adequately present its cultural uniqueness." describes the beneficiary as "a specialty Afghan chef who has many years of experience in the history and unique processes of development and services of unique Afghan dishes." He further notes that the petitioner's restaurant "offers a rare, authentic, culturally unique dining experience." concludes:

> It is our opinion based upon [the beneficiary's] work experience and training, [the beneficiary] is highly qualified for a position of Afghan Culinary Specialist who will impart his culturally unique and highly specialized knowledge and skills in the Afghan culinary arts to staff members

> at the [petitioner's restaurant] as well as to the public-at-large at [the petitioner's] restaurant and at U.S.-Afghan cultural unique events throughout the Tri-State area."

The petitioner submitted a similar letter from a Japanese restaurant. indicates that based on his experience with ethnic food delivery, he understands that "food preparation is an important part of culture." As such, he states that "the preparation of Afghan food by [the beneficiary] is going to reflect the unique culture of Afghanistan and present it to an American audience." He further states:

> Like many other ethnic restaurants in the U.S., preserving authenticity and presentation of cultural uniqueness of Afghan culinary arts is not an easy task unless the staff in the restaurant are provided with such an opportunity that they are trained by a Chef inculcated with the unique skills and knowledge of the culture from Afghanistan.
>
> Due to [the beneficiary's] work experience and training, [the beneficiary] is highly qualified for a position of Afghan Specialty Chef who will impart his culturally unique and highly specialized knowledge in the Afghan culinary arts to staff members at the [petitioner] as well as to the public at-large.
>
> Based upon our experience in the ethnic restaurant industry, we are qualified to render an opinion that culturally unique skills of an experienced chef who was born in the home county [*sic*] of the cuisine would be required in order to adequately present its cultural uniqueness. For example and by way of illustration we believe that [the beneficiary] possesses the requisite knowledge of culturally unique Afghan cuisine and the culinary arts, and shall impart to the customers of [the petitioner] an appreciation of the culturally unique cuisine and other cultural aspects through events that will take place at the [petitioner's restaurant] and at U.S.-Afghan events throughout the tri-state area.

The petitioner also submitted a letter from states:

> [The petitioner] is honoring the food they serve by hiring an Afghani chef. [The beneficiary] in particular, is able to bring a specialty cultural experience to staff and customers at [the petitioning restaurant]. We understand the restaurant also caters so this will also be impacted by a specialist staff who is able to bring his cultural approach, through food, to more people.
>
> Based upon our work to date as restaurateurs, we are qualified to render an opinion that the best Chef for an Afghan restaurant will be one who was born in the home county [*sic*] of the cuisine. This allows the restaurant to be culturally relevant and unique amongst other restaurants. We have reviewed the qualifications of [the beneficiary] and he in particular can present culturally unique food to the public in New Jersey and tri-state area....

Finally, the petitioner submitted a letter from of the addresses the importance of restaurants, and ethnic restaurants in particular, to the economy of Teaneck, New Jersey. He notes that the petitioning restaurant participates in week, which is "created to showcase the multifaceted dining options in Teaneck," and to introduce Teaneck to new consumers. With respect to the beneficiary, he states:

> I support of [*sic*] bringing in [the beneficiary] for the purposes of continuing and enhancing the culturally unique program and the art of cooking at the [petitioner's restaurant]. The [petitioner] is Teaneck's only Afghan restaurant and is an excellent resource for our community to experience and enjoy authentic Afghan food. [The beneficiary] will further the program there by teaching the staff more about Afghan food, its preparation and presentation; the restaurant takes its task as a cultural center very seriously and is decorated in a manner that highlights Afghan rugs, wall hangings and other décor. The food is framed by the décor and should be prepared by a culinary expert such as [the beneficiary]. When the restaurant participates in cultural events in New Jersey, New York and beyond, [the beneficiary] and staff will act in a way as emissaries of cultural life in Teaneck, and it is my opinion that bringing a specialist is our best advertising.

None of the other letters submitted with the RFE response, several of which are from regular customers of the restaurant, mention the beneficiary and therefore cannot meet the petitioner's burden pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A).

In denying the petition, the director acknowledged that the petitioner submitted evidence in the forms of letters and recommendations reflecting the opinion that the authentic preparation, presentation and creation of Afghan food by the beneficiary "will foster a culturally unique awareness and therefore qualifies the beneficiary, the job and the duties." The director acknowledged that, although the evidence indicates that the beneficiary is an Afghan chef and likely has a sound knowledge of Afghan culture, "nothing shows the beneficiary's work . . . is or can be considered culturally unique." The director noted that "simply producing culturally authentic dishes for a restaurant or catering business is not sufficiently qualifying for this classification."

On appeal, counsel asserts that the definition of culturally unique is broad and "is meant to capture any style of expression that the beneficiary utilizes to give over a cultural experience and can certainly include the experience of dining if food is prepared in an ethnic manner." Counsel asserts that the director's determination is "grossly narrow and unjust" and ignores the broad intentions of the regulations governing the P-3 classification. Finally, counsel asserts that the petitioner submitted extensive testimonial evidence sufficient to satisfy the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

While the petitioner submitted extensive testimonial evidence in support of the petition, none of the letters submitted satisfy the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A). Several of the letters, including all of the letters submitted at the time of filing, fail to even mention the beneficiary at all. The regulation permits submission of affidavits, testimonials, or letters from recognized experts attesting to the authenticity of *the alien'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 skill.* Therefore, letters which make no reference to the beneficiary cannot satisfy the petitioner's evidentiary burden.

Of the letters that do reference the beneficiary, several are provided by operators of Japanese restaurants, who claim experience in operating ethnic restaurants, but no particular expertise in Afghan culinary arts or culture. The regulation permits the petitioner to submit testimonial evidence from recognized experts. The record does not establish that are recognized experts in the beneficiary's field. All three restaurant owners support the petitioner's hiring of a chef from Afghanistan to ensure the authenticity of the petitioner's cuisine, but none of them have attested with any specificity to the beneficiary's skills in performing, presenting, coaching or teaching a unique or traditional art form. Further, these authors do not clearly state the basis of their knowledge of the beneficiary's skill.

, like the Japanese restaurant owners, does not claim to possess any particular expertise in Afghan culinary arts or culture, such that he could be considered a recognized expert in the beneficiary's field. He clearly considers the petitioner's restaurant to be a valuable asset to Teaneck's community, but he also fails to discuss with any specificity the beneficiary's skills in performing, presenting or teaching a unique or traditional art form. states that he supports the beneficiary's employment with the petitioning restaurant, but he does not discuss the basis of his knowledge of the beneficiary's skills.

resume indicates that he is a professor of philosophy and religion, as well as a consultant in the areas of diversity, community and workforce pluralism. He claims expertise in Afghan culinary and cultural arts based on this background, as "food is an important ingredient" in understanding religion and culture. notes that the beneficiary's background "includes correct Islamic preparation of halal meats and dishes" that is required for the petitioner's "well-known Islamic eatery dedicated to traditional Afghan and Muslim cuisine," and that the beneficiary "is very qualified to impart his unique and invaluable knowledge and skills that are a gustatory expectation for all practicing Muslims." does not indicate the basis of his knowledge of the beneficiary's skill. In fact, his statement is the only information in the record that mentions halal or Muslim food preparation methods. The beneficiary's resume and letters from his employers in Afghanistan only mention that he is an Afghan cook experienced in cooking specific dishes, and there is no mention of any special training or experience in halal preparation and cooking methods. Therefore, it is unclear on what information based his opinion.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) specifically permits the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the alien's performance or presentation of a culturally unique art form. USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

The admissibility of and weight to be accorded expert testimony may vary depending on such factors as the extent of the expert's qualifications, the relevance of the testimony, the reliability of the testimony and the overall

probative value to the specific facts at issue in the case. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011)(citing Fed. R. Evid. 702).

The testimonial evidence does not fully satisfy all components of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A). Given the lack of specificity with respect to the beneficiary, the testimony does not assist USCIS in determining whether the beneficiary in this matter possesses authentic skills in performing, presenting, coaching, or teaching the claimed unique or traditional art form. The evidence fails to establish the manner in which the authors gained knowledge of the beneficiary's skills, fails to establish the credentials of the authors as experts on the culture of Afghanistan, and fails to address in detail any culturally unique aspects of the beneficiary's cooking.

While the AAO acknowledges a nexus between food and culture, simply establishing that the beneficiary was trained in Afghan cooking in his native Afghanistan is not sufficient to demonstrate his eligibility for this classification. The submitted letters are lacking in probative value and specificity with respect to the beneficiary's culturally unique skills, and they are thus insufficient to meet the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

In response to the RFE, the petitioner submitted an article which appears to be printed in Arabic, accompanied by an English translation. The petitioner indicated that the article was published in "the Boostan paper" in Kunduz, Afghanistan on August 8, 2009. The article is titled "Introduction of an experienced chef," and provides biographical information regarding the beneficiary, noting that he has "more than 9 years of professional job experience and prepares dishes; Palow, Kebab, Chalow, Sabzi Chalow, Chicken Kebab, Lamb Kebab, Kofta Palow, Mantoo and many more with great enthusiasm and passion." While this article provides additional confirmation that the beneficiary is a chef experienced in Afghan cooking, it does not document how the beneficiary's performance is culturally unique, as required by the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B).

The petitioner has not submitted any other published materials that mention the beneficiary. The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary and his individual performance of the claimed culturally unique art form.

Broad assertions that the preparation of Afghan cuisine is a culturally unique art form 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).

C. *Evidence that all of the beneficiary's performances or presentations will be culturally unique events*

The remaining issue is whether the petitioner established that the beneficiary will be coming to the United States to participate in a cultural event or events which will further the understanding or development of his art form. 8 C.F.R. § 214.2(p)(6)(i)(B). The regulations require the petitioner to submit evidence that all of the beneficiary's performances or presentations will be culturally unique events. 8 C.F.R. § 214.2(p)(6)(ii)(C).

The director determined that "simply producing culturally authentic dishes for a restaurant or catering business is not sufficiently qualifying for this classification."

On appeal, counsel emphasizes that the petitioning restaurant is a "cultural landmark," and notes that the petitioner provided a list of cultural events outside of the restaurant in which the beneficiary will participate.

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 or presentations 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, based on the petitioner's representations, it is evident that the beneficiary will spend the majority of his time preparing meals in the petitioner's restaurant and training other cooks. The "events" in which the beneficiary will primarily participate are the day-to-day kitchen activities of a restaurant. While the restaurant's patrons will enjoy the food he prepares, the record does not demonstrate that cooking food in an ethnic restaurant is a "cultural event which will further the understanding or development" of a culturally unique art form. The culturally unique aspects of the beneficiary's instruction and cooking responsibilities have not been established, nor has it been established that the petitioner's restaurant is inherently a "cultural landmark" by virtue of being an ethnic restaurant. The record does indicate that the petitioning restaurant will participate in various cultural events in the community, and such events would be qualifying if the petitioner had otherwise established that the beneficiary is a culturally unique artist or entertainer.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist or entertainer simply by claiming that he will be preparing traditional Afghan cuisine and establishing that he was trained in Afghan cooking in Afghanistan. The petitioner must establish that the beneficiary's performances and presentations, 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). 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).

B. Artist or Entertainer

A remaining issue is whether the beneficiary, who has been trained as a restaurant chef, can be properly classified as an artist or entertainer. 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, but is not limited to, fine arts, visual arts, and performing arts. 8 C.F.R. § 214.2(p)(3). The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides that P-3 classification may be accorded to artists or entertainers, 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.

The beneficiary's activities, which will include cooking and instructing other cooks in Afghan cooking, do not appear to fall within the fine arts, visual arts, performing arts, nor has the petitioner shown that the preparation of Afghan food is inherently an artistic performance or presentation. While "culinary arts" are expressly included in the more expansive definition of "arts" applicable to O-1 nonimmigrants at 8 C.F.R. § 214.2(o)(3)(ii), the AAO will not automatically consider cooks and chefs to be "artists or entertainers" under the definition of arts applicable to P-3 petitions. It is the petitioner's burden to demonstrate how the beneficiary's activities qualify him as an "artist or entertainer" engaged in artistic performances or presentations. The petitioner has not done so in this matter. 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).

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.

Finally, the AAO acknowledges counsel's request for oral argument. The regulations at 8 C.F.R. § 103.3(b) provide that the requesting party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, counsel identified no unique factor or issue of law to be resolved. Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument will not be granted.

The petition is denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.