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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: **MAR 29 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, a health club, filed this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner seeks to employ the beneficiary as a choreographer of Brazilian/Latin dance for a period of two years.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary is a culturally unique artist or entertainer or that the beneficiary would be performing in culturally unique events as a choreographer of Brazilian/Latin dance. The director further noted that the petitioner failed to submit sufficient evidence that the beneficiary would be entering the United States 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.

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 submits additional evidence of the beneficiary's qualifications as a choreographer of Brazilian/Latin dance. The petitioner also submits a revised contract outlining the beneficiary's proposed teaching schedule.

Upon review, the AAO finds that the petitioner has not established that the beneficiary is a culturally unique artist or entertainer or that he is coming to the United States to participate in an event or events which will further the understanding or development of a culturally unique art form.

I. The Law

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

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

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

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

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

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

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

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

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

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

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

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

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 7, 2011. The petitioner stated that the beneficiary will be employed as a choreographer of Brazilian/Latin dance. In its offer letter to the beneficiary, the petitioner indicates that the beneficiary will be employed as "choreographer of Brazilian/Latin dance." The petitioner describes the proposed duties as follows:

Create and teach unique dance routines representative of the cultural heritage and dance traditions of Brazil and Latin America

A. *Culturally Unique Program*

The AAO concurs with the director that the petitioner did not meet the evidentiary requirements for a petition involving a culturally unique program, as set forth at 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. In a request for evidence ("RFE") issued on August 8, 2011, the director requested both forms of evidence, 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 his art form. The petitioner's evidence will be discussed below.

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 has submitted the following evidence of the beneficiary's qualifications:

- Several attestations and "Certificates of Participation" from Andanca Academy and Joinville Dance Academy attesting to the beneficiary's role as a dancer and/or choreographer. The attestations refer to the beneficiary's participation in 1992, 1996, 1998 respectively. The petitioner has not submitted any evidence explaining the nature of the Andanca Academy or providing testimony to the caliber of the beneficiary's performance. The petitioner did submit a "brief history of Comdanca, Joinville Dance Company." The letter indicates:

It is the only professional dance group that has survived until now in our city, where dance is the only experience for all of its dancers. We have presented our performances in various events at fairs, conventions, conferences, traditional festivals, Olympics opening and closing, pageants,

etc. Our eclectic performances are what make Comdanca a favorite of everyone, working with fun, festive and colorful choreographies with a high level of quality and dance techniques.

While the explanation of [REDACTED] explains the nature of the [REDACTED] there is no evidence in the record attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form of Brazilian/Latin dance and/or choreography. It is also unclear from the evidence provided if the beneficiary is or was a member of the company or if he merely participated in various festivals.

- Certificates of Participation in the Joinville Dance Festival evidencing the beneficiary's participation in several Joinville Dance Festivals in July 1988, July 1989, July 1991, and August 1992.
- A certificate of attendance of the 9th [REDACTED] Convention in Jun 1996. This certificate is signed by [REDACTED]. A second certificate of attendance 11th Parana Physical Education Convention in April 1998 evidencing the beneficiary's completion of the course, Aqua Gymnastics: Fundamentals. The petitioner has not submitted evidence explaining the nature or caliber of Korppus CPH. It is unclear how participation in a physical education convention evidences the beneficiary's skill in performing or choreographing Brazilian dance.
- A certificate of completion signed by [REDACTED] [REDACTED] evidencing the beneficiary's completion of the course Ballroom Dance for the XIV Joinville Dance Festival, July 22, 1996.

In the RFE, the director instructed the petitioner to provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skill in performing or presenting the unique or traditional art form.

The petitioner submitted a signed letter dated August 7, 2007 from [REDACTED] [REDACTED] states:

[The beneficiary's] talent as a dancer was quickly evident, but the exceptional choreography, evoking his Latin dance background and Brazilian free spirit make his students' experience truly exciting. When I finally met [the beneficiary] I was struck by his uncanny ability to teach complicated steps, challenging enough to motivate the class, simple enough to follow. Having studied ballroom dance for 35+ years, I feel that I am well qualified to recognize a special talent. An outstanding dancer, a distinguished choreographer, a distinguished choreographer and a Brazilian, reflective of his culture . . . these are the important ingredients in the unique artistic person that is [the beneficiary].

While [REDACTED] speaks highly of the beneficiary's talents and qualifications as a Brazilian dancer and coach, neither comments specifically upon the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional Brazilian art form. [REDACTED] letter does not attest with any specificity to the

cultural or traditional elements of the beneficiary's coaching, instruction or athletic performance. He suggests that the beneficiary's qualifications are unique because of his Brazilian heritage, but he fails to identify what, aside from his Brazilian background, distinguishes the beneficiary.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill." As a matter of discretion, USCIS may accept expert opinion testimony.¹ However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Here, the letter submitted is deficient and cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

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

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

¹ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The petitioner did not submit any evidence pertaining to this criterion prior to the adjudication of the petition. Therefore, the director properly concluded that the petitioner failed to establish that the beneficiary's "performance" as a Brazilian dance instructor and choreographer is culturally unique.

The petitioner has submitted photographs, promotional materials and newspaper articles describing the petitioner's business, along with training events and charity engagements. This evidence does not specifically refer to Brazilian dance/choreography. For example, one press release announces an event sponsored by and the petitioner. It refers to a "chance to meet inspiring personal coach on how to stay balanced with work, family and leisure." Such evidence does not constitute "evidence that the beneficiary's performance is culturally unique as evidenced by reviews in newspapers, journals or other published materials." 8 C.F.R. § 214.2(p)(6)(ii)(B). The submitted articles make no reference to the beneficiary.

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

The director determined that the beneficiary's teaching Brazilian dance at a private health club does not qualify as culturally unique pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

We concur with the director's conclusion. As noted above, the "events" in which the beneficiary will actually participate actually involve a full-time fitness instructor position. He will not be performing as an artist or entertainer, and the AAO cannot conclude that taking a "cardio latino" class is a culturally unique event.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by stating that the beneficiary himself has a unique skill set. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment event for which his services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance and the event itself 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 traditional Brazilian dance are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that 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).

IV. 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 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 appeal 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.

Nothing in this decision should be taken to suggest that the AAO fails to recognize the talent the beneficiary possesses, or as an indication that he is not a highly qualified Brazilian dancer/choreographer. This denial does not preclude the petitioner from filing a new visa petition, supported by the required evidence, in an appropriate classification.

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 petition is denied.