



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 21 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 an artist or entertainer in a culturally unique program. The petitioner indicates that it is engaged in Chinese martial arts and Shaolin Kung Fu teaching and performance. It seeks to employ the beneficiary as a Kung Fu instructor/performer for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary possesses culturally unique skills as an artist or entertainer or that all of his performances or presentations would be culturally unique events.

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 maintains that all of the beneficiary's performances or presentations would be culturally unique events because the beneficiary will be engaged in "fostering interest in traditional Chinese Kung Fu and culture." Counsel contends that the evidence of record establishes the authenticity of the beneficiary's culturally unique skills and that all of his activities on behalf of the petitioner will be culturally unique. Counsel submits a brief in support of the appeal. Counsel has not submitted any further documentary evidence on appeal.

Upon review, 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. The AAO further finds that the beneficiary is neither an artist nor an entertainer, but an athlete and athletic coach, and as such, his proposed activities do not fall within the plain language of the statute at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts." The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).

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

A. Factual Background

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 25, 2012. The petitioner seeks to employ the beneficiary as a Kung Fu Instructor/Performer. In a support letter dated July 15, 2012, the petitioner indicates that the beneficiary "has an excellent training background, extensive experiences and a record of outstanding accomplishments in the field of Chinese martial arts." Specifically, the petitioner indicates that the beneficiary was trained at the [REDACTED] and selected as a key member of the [REDACTED] the temple's official martial arts performing team. The petitioner indicates that the beneficiary toured across the world to perform and instruct Shaolin Kung Fu.¹

In its support letter the petitioner stated that its school is "one of the premier martial arts institute (*sic*) in the United States specialized in teaching and performing of (*sic*) Shaolin Style traditional Chinese martial arts. The petitioner indicates that it also "strives to pass on the traditions of Chinese culture associated with martial arts not only to its students, but also to the general public," by providing "martial arts, lion and dragon dance performance and exhibition at a variety of events and venues throughout the United States, using the physical arts as a means of introducing the American people to the rich culture of China."

The petitioner submitted a brochure, class schedule and list of fees for its martial arts studio. The petitioner indicates that it teaches traditional Shaolin Kung Fu, Tai Chi, Women's self-defense and Zen meditation. The petitioner provided a copy of its schedule for "2012 Summer Joint Camp," reflecting that the petitioner offers daily, half-day martial arts classes for children including: (1) basic skills/floor exercises; (2) fighting forms; and (3) weapons training: broad sword/staff/straight sword.

The petitioner's support letter describes Chinese martial arts, also known as Kung Fu or Wushu, as "a system of hand-to-hand combat techniques and exercises" consisting of "hundreds of different styles and systems, each composed of different offensive and defensive movements and techniques, such as

¹ The AAO notes that the record contains no independent evidence of the beneficiary's performances for the [REDACTED]

kicks and punches, crouches and dodges, leaps and turns, etc.," which combines "the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy."

The petitioner's support letter describes Shaolin-style martial arts as "one of the main styles of traditional martial arts" and as "unparalleled for both its effectiveness in combat and as a way of mental and physical development." The petitioner states that Shaolin Kung Fu "is considered by many as the foundation of all modern martial arts like Karate, Judo, Tai Kwan Do, which are actually variants of the techniques and skills that originated from Shaolin Kung Fu."

The petitioner submitted a copy of its employment offer letter to the beneficiary, which states:

Your primary job duties will consist of teaching all levels of our martial arts classes, coaching various competitions and event teams, representing our school at various performances, demonstration events, and other coming activities about Kung Fu in 2012 and 2013.

In its support letter the petitioner further stated that the beneficiary "agrees to serve as [our] coach for martial arts tournaments and performance; martial arts instructor in Kung Fu and other self-defense techniques" as well as a "martial arts choreographer and instructor at various exhibitions and competitions [in] which [the petitioner] will participate during the employment period."

The petitioner provided an itinerary, list of planned events, which did not refer to the beneficiary. The itinerary lists four events in 2012 after the date of filing the petition: an [REDACTED] tournament in [REDACTED] and, in [REDACTED], one performance for Thanksgiving and two performances for the New Year.

With respect to the beneficiary, the petitioner submitted the following documentation:

- Certificate of Appreciation dated June 16, 2012 from the [REDACTED] [REDACTED] for the beneficiary's judging at the [REDACTED]
- Several photographs of the beneficiary demonstrating traditional Chinese martial arts techniques.

B. Artist or Entertainer

As a preliminary matter, the AAO notes that 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 "fields of creative activity or endeavor" and includes, but is not limited to, fine arts, visual arts, and performing arts. See 8 C.F.R. § 214.2(p)(3).

Therefore, it is necessary to determine whether Wushu is a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. The petitioner's support letters did not elaborate as to how the petitioner's school is dedicated to the "arts" or how the

beneficiary's services as a coach or instructor are artistic, rather than athletic, in nature, given the context of the terms and conditions of his employment.

As stated above, with respect to Wushu martial arts, the petitioner stated it is "a system of hand-to-hand combat techniques and exercises" consisting of "hundreds of different styles and systems, each composed of different offensive and defensive movements and techniques, such as kicks and punches, crouches and dodges, leaps and turns, etc.," which combines "the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy." The petitioner further stated:

As one of the most prestigious martial arts institute (*sic*) Petitioner strives to pass on the traditions of Chinese culture associated with martial arts not only to its students, but also to the general public. [The petitioner] provides martial arts, lion and dragon dance performance and exhibition at a variety of events and venues throughout the United States, using the physical arts as a means of introducing the American people to the rich culture of China."

The petitioner did not further elaborate with respect to "the traditions of Chinese culture associated with martial arts."

The AAO does not doubt that the petitioner's school teaches authentic Chinese Wushu styles, but it has failed to explain or demonstrate why the beneficiary should be deemed an "artist" for purposes of this classification. According to the evidence submitted, Wushu is a sport with national governing body, the U.S. Wushu Kung Fu Federation (USWKF). In addition, Wushu sporting events at the world, continental, and national levels are held all over the world.

Therefore, while Wushu is a martial "art," it has not been shown to be a "field of creative activity or endeavor." It is a sport whose practitioners are recognized as athletes. The beneficiary is coming to the United States to coach students and athletes in an athletic discipline and not as an artist, performer or entertainer. As such, the AAO finds that the beneficiary is not an alien who can be classified as a P-3 artist or entertainer, and the petition cannot be approved for this reason.

C. Culturally Unique Program

Even assuming, *arguendo*, that the petitioner established that the beneficiary is an artist or entertainer as required by the statute, 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 September 7, 2012, 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.

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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 initially submitted a *Wikipedia* article discussing the Chinese martial art of Shaolin Kung Fu, titled [REDACTED] evidence of the beneficiary's award and photographs of the beneficiary, as listed above, as evidence of the authenticity of his culturally unique skills.

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 director advised the petitioner that it should provide the credentials of the expert, including the basis of his or her knowledge of the beneficiary's skill.

The petitioner submitted four expert letters in response to the RFE. The petitioner provided a support letter from [REDACTED] dated November 9, 2012, in which Ms. [REDACTED] stated:

It is our opinion that [the beneficiary] has culturally unique martial arts skills and all his performances are culturally unique. All events he attended or will attend are cultural (*sic*) unique in nature, and all activities are appropriate for P-3 petition. He is well qualified as Martial Arts Instructor/Performer. We therefore have no objection to the USCIS's approval of this P-3 visa petition.

As a well-known martial artist from world-famous [REDACTED] [the beneficiary] was invited as a guest performer of the [International Martial Arts Tournament] this year. I made this decision based on many strong recommendations from other martial arts masters. He did a very good job performing various Shaolin Kung Fu skills and movements, and made tremendous contributions to the success of the tournament.

As the event chair of the tournament, I (*sic*) very much aware of the unique skills and expertise that [the beneficiary] excels (*sic*) in the field of Chinese Martial Arts. I believe he will make great contributions to the martial arts community and definitely will benefit our country.

[REDACTED] of the [REDACTED] provided a letter dated November 15, 2012, and stated her opinion that the beneficiary "is an outstanding marital artist in the field of traditional Chinese Martial Arts." Ms. [REDACTED] further stated:

This letter is written to attest to the authenticity of [the beneficiary's] advanced skills and expertise in performing and teaching Chinese Shaolin Kung Fu, which is a unique and

traditional art form originally from China. All activities and events the beneficiary will attend are culturally unique traditional Chinese martial arts events. . . Overall I feel that [the beneficiary] is a valuable asset to the martial arts community in our country, and therefore, I am happy to support his P-3 visa application.

The petitioner submitted a letter from [REDACTED], president and chief coach of [REDACTED] in [REDACTED] and [REDACTED] states that the beneficiary is "a leading and key member of the world-renowned [REDACTED] and "a highly talented Shaolin Kung Fu master." In addition, [REDACTED] states:

Shaolin Kung Fu is a culturally unique art form originally from [REDACTED] it has a long history in China for more than 1,600 years.

[The beneficiary] is a world famous Shaolin Kung Fu master. He has won many awards and honors in the field, including [REDACTED] His Kung Fu skills and expertise are culturally unique to traditional Chinese culture.

Mr. [REDACTED] further states:

Having extensive experience in performing and teaching, [the beneficiary] has been much appreciated by the martial arts community in the [REDACTED] He is definitely a top master with international acclaim. His accomplishments and contribution are far more important than many other professional masters.

The petitioner submitted a letter from [REDACTED], president and chief instructor of [REDACTED] in [REDACTED]. Mr. [REDACTED] states:

[The beneficiary] is a world famous Kung Fu master. He has won many awards and honors in the field. He has performed martial arts at various places both (sic) in the United States. I have been in the martial arts community for more than 15 years. His accomplishments and contribution are far more important than many other professional masters.

Mr. [REDACTED] further states:

Wushu is an important component of the cultural heritage of China. Beginning as an ancient Chinese form of self-defense, Wushu literally means "martial arts" and encompasses the forms popularly known in the West as Kung Fu and Tai Chi. Over the years Wushu has developed from a combat style into a dynamic performance-orientated art. It emphasizes speed, balance, coordination and presentation, resulting in an athletic and aesthetically powerful competitive sport. In China, Wushu is a way of life and an

² The AAO notes that the record contains no independent evidence of the beneficiary's claimed awards in a [REDACTED]

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integral part of Chinese culture. It is practiced by people of all ages and backgrounds for self-defense, health and mental discipline.

The director found that, while the submitted letters praise the beneficiary's skills as a martial artist, the testimonial evidence did not satisfy the requirements of 8 C.F.R. § 214.2(p)(6)(ii)(A) because the evidence submitted failed to establish that the persons providing letters are recognized experts in the field, and failed to discuss how the beneficiary's performance of Chinese martial arts is culturally unique. The AAO also observes that the record indicates that Wushu is taught and practiced worldwide, and the record does not distinguish how the beneficiary's style of martial arts remains culturally unique to China.

Upon review, we agree with the director that the letters submitted fail to satisfy the requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). While we do not doubt the beneficiary's skills as a martial arts athlete, performer or instructor, we note that none of the letters attests with any specificity to the cultural or traditional elements of the beneficiary's performances or instruction methods, or how the beneficiary's specific form of Chinese martial arts is "culturally unique" compared to the forms that are practiced worldwide. The letters describe the beneficiary as a "world famous" martial artist who has made "tremendous contributions" to the development of martial arts, without mentioning any culturally unique aspects of his performance.

We further note that, while the authors of the letters discussed their own credentials, the petitioner failed to submit evidence to establish that they are "recognized experts" in the beneficiary's field as required by the plain language of the regulation. The petitioner is required to "give the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill," pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Here, the persons providing testimonial evidence have not fully established the basis of their knowledge of the beneficiary's skill.

While Mr. [REDACTED] does offer some explanation of Wushu as "an important component of the cultural heritage of China," he does not attest with specificity to the culturally unique skills of the instant beneficiary. Again, he fails to indicate what makes Chinese Wushu, and the specific form of Wushu practiced by the beneficiary, unique from the form of the sport that is practiced worldwide. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

Overall, 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, and fails to reference any culturally unique aspects of the beneficiary's Kung Fu performances.

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.³ However, USCIS is ultimately responsible for making the final

³ 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

determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. 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). Here, for the reasons discussed above, the expert opinion testimony is lacking in probative value, as it does not assist USCIS in determining whether the beneficiary in this matter is an artist or entertainer skilled in a culturally unique art form.

While the AAO acknowledges that Kung Fu or Wushu is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified Kung Fu practitioner trained in China is not sufficient to demonstrate his eligibility for this classification. Here, the letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. Accordingly, the AAO concurs with the director's determination that the testimonial evidence submitted in response to the request for evidence did not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A).

In addition, as stated above, the record contains the beneficiary's certificate of appreciation for judging at a national Wushu competition. Although the director did not discuss this award in her decision, upon review the award certificate alone does not establish whether or how the beneficiary's skills are culturally unique. The award certificate is issued by the [REDACTED]

[REDACTED] It establishes that the beneficiary has been a successful judge in a competitive athletic competition in the United States. This classification is reserved for culturally unique artists and entertainers, rather than athletes and athletic coaches.

None of the submitted letters meet the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A), which expressly requires the petitioner to give the credentials of recognized experts providing testimonial evidence, as well as the basis of his or her knowledge of the beneficiary's skills. The authors of these letters have not indicated the basis of their knowledge of the beneficiary's skills. Further, the record contains no independent evidence of the beneficiary's claimed performances for the [REDACTED] but instead documents only his one award in judging a Wushu athletic competition. Therefore the petitioner has not overcome the director's finding that this criterion has not been satisfied.

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).

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

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

The petitioner has submitted a number of articles about Chinese martial arts and Shaolin Kung Fu, along with the results of a Google search for the term "Chinese Culture Shaolin Kung Fu." With respect to the Google search results, we emphasize that it is the petitioner's burden to submit published materials that meet this evidentiary criterion. USCIS is not obligated to conduct a search of the Internet for evidence that might meet the petitioner's evidentiary burden. Regardless, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary or group and their individual performance of the claimed culturally unique art form. Despite claims in the record that the beneficiary is "world famous," the petitioner has not submitted any published materials that mention the beneficiary, and thus it has not submitted evidence that satisfies the plain language of this regulatory criterion.

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

The director determined that the beneficiary's proposed performances or presentations as a martial arts instructor/performer will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). In denying the petition, the director noted that the petitioner's itinerary and class schedule, while reflecting that the petitioner offers martial arts performances and training, do not mention the beneficiary as being engaged in the claimed culturally unique activities.

On appeal, counsel emphasizes that the petitioner is a martial arts school and the beneficiary's role will be to teach Kung Fu. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's martial arts teachings and performances qualify as a culturally unique art form, then it can satisfy this criterion.

As discussed above, however, the petitioner did not submit evidence to satisfy the criteria at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B) and therefore did not submit evidence to establish that the beneficiary's performances and teaching are culturally unique.

This issue is relevant as the petitioner indicates that the beneficiary's primary role will be to teach Kung Fu at the petitioner's studio. As previously stated, at the time of filing, the petitioner submitted its class schedule, fee schedule for classes and summer camp brochure. The petitioner provided an itinerary, or list of planned activities, which did not refer to the beneficiary. The itinerary lists four events in 2012, after the date of filing the petition: an [REDACTED] tournament in [REDACTED], one performance for Thanksgiving and two performances for the New Year.

Although the petitioner and counsel indicate in letters that the petitioner's school teaches "Shaolin Kung Fu," the petitioner's own brochures and advertising materials refer to Shaolin teachings, as well as Tai Chi, Self Defense, Kickboxing, MMA [mixed martial arts] and Zen Meditation." The fact that Kung Fu

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originated in China does not equate to a finding that all modern Kung Fu programs continue to offer "culturally unique" activities.

The AAO acknowledges that two of the individuals who have provided testimonial evidence indicated that the beneficiary was trained at the Shaolin Temple in China. Little background information has been provided regarding the beneficiary other than copies of the award he won for judging at an national Wushu tournament in California. Regardless of whether the beneficiary is or was a Shaolin monk, the evidence of record does not establish that he would be incorporating any traditional, religious or cultural elements of Shaolin Kung Fu as an instructor in the petitioner's Kung Fu curriculum.

At the time of filing the petition, counsel asserted that "Chinese Martial arts, also known as Kung Fu or Wushu, combines the rich legacy of ancient fighting techniques with elements of Chinese religion, medicine and philosophy," and in response to the RFE counsel asserted that "it is well-documented that Chinese martial arts is culturally unique to China." On appeal counsel emphasizes, "[t]he petitioner is a Kung Fu school, and the beneficiary is a Kung Fu master, which are the most basic points of this petition."

The claimed "culturally unique events" in which the beneficiary will participate are daily martial arts classes for students of various levels in a Kung Fu school that makes no claim to incorporate "elements of Chinese religion, medicine and philosophy." Further, the beneficiary will not be "performing" or "presenting" as an artist or entertainer, and the AAO cannot conclude that a modern Kung Fu class in a school that incorporates a variety of Kung Fu styles is a culturally unique event.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be performing "Chinese martial arts" and submitting evidence that he judged a Wushu competition in [REDACTED]. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment events 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 across all events and activities is in fact unique to a particular country, nation, society, class, ethnicity, religion, tribe or identifiable group of persons with a distinct culture. 8 C.F.R. § 214.2(p)(3). Vague references to the "Chinese martial arts" tradition are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that all of the beneficiary's performances or presentations will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

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). Nothing in this decision should be taken to suggest that the AAO fails to recognize the talent the beneficiary possesses as a [REDACTED] athlete and coach. 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.