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

(b)(6)

Date: MAR 2 9 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed the 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 coming to the United States to perform under a culturally unique program. The petitioner states that it operates a production company. It seeks to employ the beneficiary as a sound engineer for a period of one year. The petition lists the duties of the proffered position as including "recording and mixing of sound for Swedish-language reality TV productions."

The director denied the petition, finding the petitioner failed to establish that the beneficiary meets the requirements for P-3 classification. More specifically, the director found that petitioner has not established that the beneficiary, in his capacity as a sound engineer, is an artist or entertainer 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, as required by section 101(a)(15)(P)(iii) of the Act. The director determined that the beneficiary is thus ineligible for classification as a P-3 culturally unique artist and entertainer.

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 an additional reference letter, an additional letter from the president of the petitioning company, and an article about sound engineering which does not mention the beneficiary. On appeal, counsel submits the following statement on the Form I-290B, Notice of Appeal or Motion:

> . . . [T]he director of the California Service Center, USCIS denied the petition form I-129, petition for a nonimmigrant working classification as an alien with extraordinary ability pursuant to section 101(a)(15)(O)(i) of the Immigration Nationality Act . . .

The AAO notes that the notice of appeal did not specifically identify any errors on the part of the director. In addition, the notice of appeal erroneously referred to section 101(a)(15)(O)(i) of the Act, applicable to aliens of extraordinary ability, rather than to section 101(a)(15)(P)(iii) of the Act applicable to this petition.

In her brief, counsel for the petitioner states:

> The petitioner has established . . . that sound recording and production is in fact a form of art, and that duties performed by the beneficiary constitute an integral part of (sic) series of Swedish TV and film projects are in fact culturally unique.

Upon review, the petitioner has not established that the instant beneficiary qualifies as a P-3 artist or entertainer in a culturally unique program. Accordingly, the appeal will be summarily dismissed for the reasons discussed below.

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.

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.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the petitioner submits a reference letter from a sound editor and the beneficiary's film teacher. Although he describes the beneficiary as "the kind of man you want working on your production," he does not discuss the duties the beneficiary performs as a sound engineer.

The letter from the president of the petitioning entity states:

> The art of a sound mixer is not only to be able to identify by understanding the language of who is relevant in the conversation, but also mixing this live as it happens to create and design the sound scape of the production as it's being recorded . . . This is an Art.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's evidence on appeal does not address the director's finding that the beneficiary, in his capacity as a sound engineer, is not an artist or entertainer 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, as required by section 101(a)(15)(P)(iii) of the Act. The evidence of record establishes the beneficiary has no apparent experience as a performer or entertainer. His duties under the approved petition will be "recording and mixing of sound for Swedish-language reality TV productions," rather than acting as a performer or entertainer in such cultural events.

The P-3 visa classification is restricted to artists and entertainers. Thus the beneficiary is not eligible for P-3 classification pursuant to 8 C.F.R. § 214.2(p)(6)(i)(A), and section 101(a)(15)(P)(iii) of the Act.

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. § 1362. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.