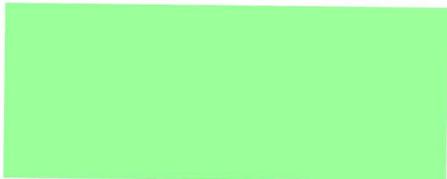


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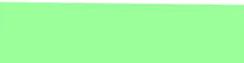


U.S. Citizenship  
and Immigration  
Services



DATE: **APR 09 2014**

Office: VERMONT 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 (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

**DISCUSSION:** The Vermont Service Center Director 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, a religious institution, seeks to employ the beneficiary as a worship choral conductor and pianist, as well as a pianist coach and teacher, for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish the cultural uniqueness of the beneficiary's performance.

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 maintains that the beneficiary's performance is and will be culturally unique because of the particular religious content of the performance. The petitioner submits a brief in support of the appeal.

### I. The Law

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

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

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

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

The regulation at 8 C.F.R. § 214.2(p)(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. Factual Background

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and Form I-129 Supplement O/P, O and P Classifications Supplement to Form I-129. According to the Form I-129 Supplement, the petitioner described the nature of the event as "religious worship" and described the duties to be performed by the beneficiary as: "Direct and conduct instrumental or vocal performances by musical groups, such as orchestras and religious choirs." The petitioner further indicated that the beneficiary "has been a performer as a Director of Worship and Choral Conductor & Pianist for many years at other religious organizations in Venezuela."

In a support letter submitted with the initial petition, the petitioner described itself as a religious institution that is part of a religious congregation without a defined denomination, which offers weekly masses to its parishioners.

The petitioner explained that its choirs sang and played at the petitioning church “are an integral part of the worship protocol which makes it necessary to adore their God.” The petitioner asserted that the beneficiary will be responsible for directing, rehearsing and teaching the choirs for church performances, and will also be performing as a pianist coach and teacher at a choir musical learning center of the petitioner, which will “promote and further petitioner’s religious values and worship education.” The petitioner also described the beneficiary’s background, stating that the beneficiary “has performed as a worship choral conductor & pianist for many years at different churches internationally” and that he “possesses knowledge of different philosophical systems and religions.”

The petitioner submitted, *inter alia*, the following documents in support of the initial petition:

1. Album and presentation cover for the beneficiary’s music CD “ [REDACTED] ”
2. Affidavit of [REDACTED] a singing teacher, attesting that the beneficiary was his student in Singing and Choral Conduction and that the beneficiary “was a serious person, complying with his responsibilities;”
3. Affidavit of [REDACTED] President of [REDACTED], attesting that the beneficiary “is a person of impeccable behavior and a high knowledge musician and piano performer who has recorded and produced with us recording works,” and is also a “Christian of exemplary behavior;”
4. Certificate from [REDACTED] Gospel Association certifying that the beneficiary has been performing services for the church as a Choral Conductor, and that all his family members are “active members of our Church, demonstrating an honest, respectful, responsible and integral behavior;”
5. Certificate from “[REDACTED]” Gospel Association certifying the beneficiary’s membership in the church for seven years and listing his various positions within the church; and
6. Certificate from “[REDACTED]” certifying that the beneficiary is an associate pastor of the church, and has conducted its chorus.
7. A consultation letter from the [REDACTED] stating that the evidence establishes that the beneficiary’s performance meets the standards for cultural uniqueness.

The director issued a request for evidence (RFE), instructing the petitioner to submit, *inter alia*, expert attestations or other documentation of the cultural uniqueness of the beneficiary’s performance.

In response to the RFE, the petitioner asserted that the beneficiary’s performance is culturally unique because it “brings a unique and authentic ‘religious’ musical experience to petitioner’s church, which is unique to the several religious liturgies celebrated by petitioner in its church.” The petitioner repeated its prior assertion that the beneficiary’s performance is culturally unique “because of the particular **religious** content of the performance in general. Specifically, [the beneficiary] will perform in a variety of gospel music which is an integral part of the worship practiced at petitioner.” The petitioner also reaffirmed that the beneficiary’s performance as a pianist coach and teacher “will promote and further petitioner’s ‘unique’ **religious** values and worship education.”

The petitioner further asserted that “[t]his mean of artistic expression may not be performed by just any professionally-trained individual unless familiar with the specific type of worship celebrated by petitioner.” The petitioner then listed the specific knowledge requirements about the petitioner’s worship that is required of the

beneficiary, including “[c]onsiderable knowledge of the Divine Liturgy,” “[t]horough knowledge of Petitioner’s religious practices;” and “[k]nowledge of the Gospel’s phonetics and its meaning within the liturgy.” The petitioner concluded: “Beneficiary has the necessary knowledge of the religious worship practices and liturgy prayed at petitioner because he has been a long time member and registered [REDACTED], both in Texas and Venezuela.”

In support of the RFE, the petitioner submitted a copy of the beneficiary’s membership card for [REDACTED] a non-profit organization located in the State of Texas, and an untranslated copy of the beneficiary’s [REDACTED] membership card. The petitioner also provided three recommendation letters.

Specifically, the petitioner provided a recommendation letter from [REDACTED] a self-described “Christian Musician” who has many years of experience as a music director producer, pianist, songwriter, and singer, as well as a music band director for various religious organizations. In this letter, Mr. [REDACTED] explains that a “skillful musical mind can release the powers of music to support the expression of God’s people,” whereas “unskillful handling of music can spoil the sacrifice of praise of the whole church, the Holy-Royal Priesthood.” Mr. [REDACTED] then asserts that he recommends the beneficiary because he “is an excellent man of God . . . whom has developed his own Music techniques for Gospel Music within the different Institutes whether is Religious or secular.” Mr. [REDACTED] concludes that the beneficiary “is a man with a high level of knowledge in Music and Arts” and “will be an excellent team member to any Organization in the United States of America by giving his unique Christian contribution and bicultural character.”

The petitioner provided a recommendation letter from [REDACTED] a self-described “recognized [C]hristian musician for over 20 years . . . [whom is] at the top of the charts in Christian music.” Ms. [REDACTED] describes the beneficiary as “a dedicated pianist, music teacher and chorus director” and states that his music and talent “is very culturally unique.” Ms. [REDACTED] concludes that “allowing [the beneficiary] stay in the United States to teach and perform his music will greatly benefit our Hispanic community. [The beneficiary] will promote the values of our Hispanic culture for all who heard his music [sic].”

Finally, the petitioner provided a recommendation letter from Pastor [REDACTED] Pastor [REDACTED] explains that [REDACTED] “is an international Christian organization which consists of hundreds of churches affiliated to our Council inside and outside of the USA.” Pastor [REDACTED] describes the beneficiary as “a volunteer [sic] talented musician with a vital role that impacts our community . . . [with] knowledge in the music industry.” Pastor [REDACTED] asserts that the beneficiary’s “teaching in the gospel genre and in vocal and instrumental brings potential to our citizens” and that his “experience contributes powerful tools to the community and to the USA, in the music industry specifically the gospel genre.” Pastor [REDACTED] concludes: “[t]here are few Christian artists engaged in the production of this musical genre, therefore consider that it is unique in its style and in the area of the city of [REDACTED] where we develop our Ministry [sic].”

The director denied the petition, concluding that the petitioner failed to establish the cultural uniqueness of the beneficiary’s performance. On appeal, the petitioner maintains that the beneficiary’s performance is and will be culturally unique because of its religious content. The petitioner states: “There is no justification why the Director of the Vermont Service Center would not consider beneficiary’s performance as a medium of artistic expression that is ‘unique’ to a particular ‘religion’ (petitioner’s congregation) which is expressly stated on the language of the regulation at 8 C.F.R. § 214.2(p)(3) (2012).”

**III. Discussion**

Upon review of the record, 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). 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.

Specifically, 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. At issue here is whether the letters submitted under 8 C.F.R. § 214.2(p)(6)(ii)(A) are sufficient to demonstrate the beneficiary's eligibility for the P-3 classification. The petitioner did not submit any evidence under the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(B) in the form of reviews in newspapers, journals, or other published materials.

The petitioner initially submitted affidavits from [REDACTED] a singing teacher, and [REDACTED] President of [REDACTED], attesting that the beneficiary is "a serious person, complying with his responsibilities," "a person of impeccable behavior and a high knowledge musician and piano performer," and a "Christian of exemplary behavior." None of these affidavits attest to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching the unique or traditional art form, as required by the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

As such, the director issued an RFE advising the petitioner that the evidence submitted was insufficient, and instructing 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 three additional letters from [REDACTED] and Pastor [REDACTED] in response to the RFE. The director found that, while the submitted letters speak to the beneficiary's ability as a pastor and leader of a church choir, they do not establish the cultural uniqueness of the beneficiary's performance.

Upon review, the AAO agrees with the director that the letters submitted fail to satisfy the requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). None of these letters attest to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching the unique or traditional art form, as required by the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A). In fact, none of the letters identify with any specificity the cultural or traditional elements of the beneficiary's performances or instruction methods. While these letters indicate that the beneficiary performs Christian gospel music, they do not explain why the beneficiary's specific form of gospel music is "culturally unique."

For instance, Mr. [REDACTED] attests that the beneficiary "is an excellent man of God . . . whom has developed his own Music techniques for Gospel Music within the different Institutes whether is Religious or secular." Not only

does Mr. [REDACTED] fail to explain why the beneficiary's specific form of gospel music is culturally unique, but his letter undermines the authenticity of the beneficiary's skills in religious gospel music by stating that the beneficiary has developed "his own" music techniques for gospel music, including for secular institutes. Mr. [REDACTED] bare assertion regarding the beneficiary's "unique Christian contribution," without any further explanation, is insufficient to meet the burden of proof in these proceedings. 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). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Ms. [REDACTED] makes no reference to the beneficiary's skills in gospel music. Instead, she makes only vague and general references to the beneficiary's skills as a "dedicated pianist, music teacher and chorus director," and asserts that the beneficiary's music will promote "the values of our Hispanic culture." Ms. [REDACTED] bare assertion regarding the beneficiary's "culturally unique" music and talent, without any further explanation, is insufficient to meet the burden of proof in these proceedings. *1756*, 745 F. Supp. at 18.

While Pastor [REDACTED] asserts that the beneficiary's musical style is "unique" because "[t]here are few Christian artists engaged in the production of this musical genre," he does not attest with any specificity to the culturally unique skills of the instant beneficiary. Furthermore, Pastor [REDACTED] does not establish the basis of his knowledge of the beneficiary's skill, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Overall, the submitted letters fail to explain the authenticity and cultural uniqueness of the beneficiary's skills.

The petitioner submitted a "no-objection" consultation letter from the [REDACTED] that simply states that "the performance in question . . . meets the standards for cultural uniqueness." The letter fails to describe the basis for its opinion. Further, consultations are advisory and are not binding on USCIS. 8 C.F.R. 214.2(o)(5)(i)(D).

The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance 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). Here, the petitioner has failed to explain why the form of gospel music the beneficiary performs is "culturally unique," as opposed to gospel music that is performed around the world at a wide variety of Christian churches as well as other religious organizations. While the petitioner has repeatedly asserted that the beneficiary will perform gospel music that is integral to the petitioner's particular, unique form of worship, the petitioner has submitted no documentation to identify, explain, and establish why its particular form of worship is unique from that of other forms of worship practiced by other Christian churches. In fact, the record indicates that the beneficiary's performances are applicable to "different churches internationally" and "different philosophical systems and religions." Vague references to the religious or Christian content of the beneficiary's gospel music in general are insufficient to establish the beneficiary's eligibility for this classification. *Id.*

#### IV. Conclusion

The statute requires that the beneficiary be an artist or entertainer who is coming to 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 meets the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3) and 214.2(p)(6)(ii). The petitioner has failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons. 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.