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: JUL 11 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 youth soccer club, seeks to employ the beneficiary as a youth soccer coach for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish the cultural uniqueness of the event, performance or competition.

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 will be coaching a culturally unique English style of soccer. 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.

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

Further, 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.

The regulation at 8 C.F.R. § 214.2(p)(3) defines the term "culturally unique" as "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." It also defines the term "arts" as "includ[ing] fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

II. Facts and Procedural History

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, on behalf of the beneficiary. On the Form I-129 Supplement O/P, the petitioner indicated that it is requesting classification as a "P-3 Artist/Entertainer coming to the United States to perform, teach or coach under a program that is culturally unique."

In a letter submitted with the initial petition, the petitioner explained that it is a non-profit organization that provides competitive soccer opportunities for local youth, whose mission is "to enhance each player's enjoyment of the game while promoting understanding, skill, appreciation and knowledge of different styles of international and American football/soccer." The petitioner stated that it seeks to employ the beneficiary as an English style soccer coach. The petitioner explained some of the unique characteristics of English style soccer, such as its no-nonsense style, quick attacks with few touches on the ball, direct passes, and a faster pace, whereas American style soccer is more indirect, emphasizes possession, and is less physical.

In support of the initial petition, the petitioner submitted, *inter alia:* print-outs from the petitioner's website; an article explaining the differences between English soccer, Spanish soccer, and American soccer; an article explaining English style soccer; and an affidavit from Youth Coach Educator of attesting to the beneficiary's coaching skills.

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 reiterated that it wishes to employ the beneficiary as an English soccer coach, and reiterated the unique characteristics of English style soccer compared to American style soccer. The petitioner submitted, *inter alia:* additional print-outs from its website, including the various camp schedules where the beneficiary will be coaching; and the employment contract between the beneficiary and the petitioner, which states that the beneficiary will "provide services consisting of expert youth UK style soccer training to clients of [the petitioner] including but not limited to coaching a team(s), coaching at camps, clinics and other duties."

The director denied the petition, concluding that the petitioner failed to establish the cultural uniqueness of the event, performance or competition. On appeal, the petitioner asserts that it has established the unique cultural aspect of the coaching program in which the beneficiary will be involved. The petitioner once again reiterates the several unique characteristics of English style soccer, and refers back to previously submitted evidence.

III. Discussion

A. The beneficiary as an artist or entertainer

As a preliminary matter, the petitioner seeks to classify the beneficiary under the P-3 classification. The P-3 classification is reserved for artists or entertainers seeking to enter the United States to perform, teach, or coach as a culturally unique artist or entertainer. Section 101(a)(15)(P)(iii) of the Act. Before we can even reach the issue of whether the petitioner has established that the beneficiary and his anticipated events are culturally unique, we find that the petitioner has failed to make the threshold showing that the beneficiary can reasonably be classified as an artist or entertainer for purposes of the P-3 classification.[1]

The nature of the beneficiary's intended events in the United States is critical in determining whether the beneficiary is entering the United States to perform as an artist or entertainer. Here, the beneficiary will be entering the United States to be an English style soccer coach for the petitioner, which is a youth soccer club. Other than coaching soccer to students of the petitioning club, the petitioner has not specified any other duties the beneficiary will perform. Based on the nature of the beneficiary's intended employment in the United States, we cannot conclude that the beneficiary can reasonably be classified as an artist or entertainer as contemplated by the statute and regulations. The beneficiary's specific duties do not show that he will be primarily engaged in a creative activity or endeavor, or performing or exhibiting an art form, so as to be reasonably considered an artist or entertainer. *See* 8 C.F.R. § 214.2(p)(i) (requiring the beneficiary to further the understanding or development of his or her *art form*); 8 C.F.R. § 214.2(p)(3) (defining "culturally unique" as "a style of *artistic* expression, methodology, or medium," and "arts" as "includ[ing] fields of *creative* activity or endeavor") (emphasis added). *See generally* Section 101(a)(15)(P)(iii) of the Act and 8 C.F.R. § 214.2(p) (providing separate (providing separate classifications for athletes, artists, and entertainers). As such, the petitioner's request to classify the beneficiary under the P-3 classification is improper and cannot be approved.

Nevertheless, the director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classification that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008). We will review the evidence under the regulatory criteria for the P-3 classification.

B. Affidavits, testimonials, or letters from recognized experts

Upon review of the record, we conclude that the petitioner did not satisfy the evidentiary requirements for a P-3 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)(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

[1] The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 only one affidavit attesting to the beneficiary's coaching skills, namely, the affidavit from Youth Coach Educator of Mr. states, in pertinent part, that the beneficiary is a "competent and qualified football (soccer) Coach Certified by the English . . . . As a football coach he holds these culturally unique qualifications, as well as extensive experience and background at the professional level within traditional English Football Clubs." He states that the beneficiary's "history qualifies him in football coaching to develop and teach players with this unique style and methodology identifiable with English football and it's vastly historical culture to aid and improve players' performance." Mr. explains that the focuses on "skill-development and realistic game-related practices," and that a core foundation of the education syllabus is which "outlines an overarching vision of the English game." Mr. concludes that, upon completing the course, the beneficiary demonstrated that he "possesses the skills and the knowledge to deliver this coaching methodology in a range of environments" and that he "will continue to be a positive contributor to player development and soccer coaching."

Mr. s affidavit is insufficient to satisfy the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A). First, Mr. does not explain the basis of his knowledge of the beneficiary's skill. In addition, he fails to provide the factual basis behind his assertions regarding the beneficiary's "culturally unique qualifications" or the "unique style and methodology identifiable with English football." While he states that a "core foundation" of the education syllabus is which "outlines an overarching vision of the English game," Mr. does not provide any specific details regarding which elements of the English game are culturally unique and are taught during this course. Overall, Mr. affidavit contains little more than conclusory assertions regarding the cultural uniqueness of the beneficiary's skills in English style football. Conclusory assertions carry little probative weight and are not sufficient. 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.).

Moreover, the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires *affidavits, testimonials,* or *letters* from recognized *experts*, in the plural (emphasis added). Therefore, even if the affidavit from Mr. were sufficient, it alone cannot meet the plain language of the regulatory criterion. Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(iv) are worded in the plural. For example, the regulation at 8 C.F.R. § 214.2(p)(6)(iii), which sets forth the evidentiary requirements for a P-3 essential support alien, only requires *a* consultation from *a* labor organization, in the singular (emphasis added). Moreover, when the regulation at 8 C.F.R. § 214.2(p) wishes to include the singular within the plural, it expressly does so, such as when it uses the word "alien(s)" at 8 C.F.R. § 214.2(p)(6)(iii)(*2*) and (*3*). Thus, we can infer that the plural in any regulatory criterion has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[2]

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[2] *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

For the above reasons, the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A).

C. Documentation that the performance of the alien is culturally unique

If the petitioner does not establish eligibility under 8 C.F.R. § 214.2(p)(6)(ii)(A), the petitioner must establish eligibility under the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(B), which requires the petitioner to submit documentation that the performance of the alien is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner submitted an article explaining the differences between English soccer, Spanish soccer, and American soccer, and an article explaining English style soccer. However, neither article specifically discusses the beneficiary's performance. As such, these articles do not meet the plain language of the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(B), which requires documentation that the performance of *the beneficiary* is culturally unique. The petitioner has not submitted any other evidence under 8 C.F.R. § 214.2(p)(6)(ii)(B).

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

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) requires the petitioner to submit evidence that all of the performances or presentations of the beneficiary will be culturally unique events.

The evidence in the record reflects that the beneficiary will be employed as a soccer coach. The petitioner has not specified any other duties the beneficiary will perform. Because the petitioner failed to establish that the beneficiary's performances or presentations as a soccer coach will be culturally unique, the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(p)(6)(ii)(C).

IV. Conclusion

The petitioner has not established that the beneficiary is an artist or entertainer for purposes of the P-3 classification, or that the program which the beneficiary will coach is "culturally unique." The petitioner failed to meet the evidentiary criteria at 8 C.F.R. § 214.2(p)(6)(ii). Accordingly, the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative 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.