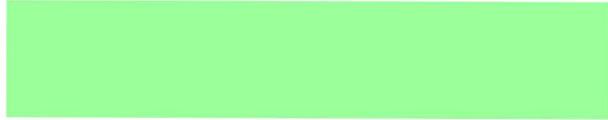


(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **JUN 27 2014** 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 (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 California Service Center Director denied the petition for a nonimmigrant visa, 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 in a culturally unique program. The petitioner, who is an owner of a photography business in California and who is also the beneficiary's agent, seeks to employ the beneficiary as a "Photographer/Artist."

The director denied the petition, concluding that the petitioner failed to: (1) submit adequate affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing a unique or traditional art form, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A); (2) submit adequate evidence that the performance of the beneficiary is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(B); and (3) establish that all of the beneficiary's performances or presentations will be culturally unique events, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

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 it has "met the requirements of culturally unique [*sic*]." 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)(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."

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.

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)(2)(iii)(B) states that all affidavits submitted with a P petition “shall specifically describe the alien’s recognition and ability or achievement in factual terms. The affidavit must also set forth the expertise of the affiant and the manner in which the affiant acquired such information.”

Finally, 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.

II. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the beneficiary as a “Photographer/Artist.” In a letter submitted with the initial petition, the petitioner stated that the beneficiary “will be employed by [the petitioner], owner of a photography business in [REDACTED] California” and that the petitioner “meets the definition of a U.S. employer.” The petitioner explained that the beneficiary engages in the culturally unique art form of “mobile photography” or “mobile art” using an iPhone. Specifically, the petitioner stated the following:

Culturally Unique: [The beneficiary’s] uniqueness culturally came only after the invention of the smart phone. He is the only known award winning amateur photographer using the smart phone to capture inner city life and beauty. His interviews by [REDACTED] an internet magazine, [are] submitted herewith. The art form is called “mobile photography” or “mobile art.” His camera of choice is an iPhone with which he takes subject less disturbed by an iPhone than a camera. He finds that the iPhone can blend into the environment easier than a camera and the people whose pictures being taken are more relaxed. The iPhone has aps that allows editing afterwards, and he has developed an expertise in converting the pictures into black and white (BW) and the end product has artistic value. His collection of profiles of people walking in the inner city has resulted in being interviewed by the mentioned magazine [sic].

In the same letter, the petitioner indicated that the beneficiary’s art form is unique to “hipsters” or the “hipster culture.” The petitioner stated: “The concept of the new culture known as the “hipsters” and the “hipster culture” has been in existence since the 1980’s. This is the reading of magazines without papers, and the instant posting of photo displays by digital speed. Even the interviews are paperless e-magazines.” The petitioner then cites to a Wikipedia description of the “hipster culture,” as follows:

Hipster refers to a subculture of young, urban middle-class adults and older teenagers that appeared in the 1990s. The subculture is associated with independent music, a varied non-mainstream fashion sensibility, progressive or independent political views, alternative spirituality or atheism/agnosticism, and alternative lifestyles. Interests in media include independent film, magazines such as *Clash*, and websites like Pitchfork Media.

Hipster culture has been described as a “mutating, trans-Atlantic melting pot of styles, tastes and behavior[s]”. Christian Lorentzen of *Time Out New York* argues that “hipsterism fetishizes the authentic” elements of all of the “fringe movements of the postwar era—beat, hippie, punk, even grunge”, and draws on the “cultural stores of every unmelted ethnicity”, and “regurgitates it with a winking inauthenticity [sic].”

The petitioner concluded that the beneficiary “fits the description” of a “hipster” because he is “a young

recent graduate of the [REDACTED] with an independent sense of style in photography and whose talent has been celebrated by a similar ‘hipster’ magazine.”

In support of the initial petition, the petitioner submitted, *inter alia*:

- A collection of the beneficiary’s photographs;
- Transcript of an interview with the beneficiary, [REDACTED] 2012);
- Transcript of an interview with the beneficiary, *Interview with* [REDACTED] 2012);
- The beneficiary’s photograph [REDACTED] that purportedly won [REDACTED] Instagrammers San Francisco Street Photography Contest (September 2011);
- The beneficiary’s photograph [REDACTED] that purportedly won [REDACTED] [REDACTED] t (June 2011); and
- The beneficiary’s photograph [REDACTED] that purportedly was a Finalist in Mobile Photography Awards 2011 in Architecture and Design Category (January 2012).

The director issued a request for evidence (RFE) instructing the petitioner to submit additional evidence to support the petition, including: a copy of a written contract or a summary of the terms of the oral agreement between the petitioner and the beneficiary; a description of the competition, event or performance in which the beneficiary will participate, including the beginning and end dates of the competition, event, or performance; expert attestations or documentation of the beneficiary’s culturally unique performances; and evidence demonstrating that all of the beneficiary’s events will be culturally unique.

In response, the petitioner provided the following explanation of the “event” in which the beneficiary will participate:

[The beneficiary] will be involved in taking pictures using iphone. The reason an iphone is the prefer photography is because of the ability to share publicly with people who are participating in the event almost simultaneously. The iphone picture of a wedding is taken but within seconds, all participating guests who share the same email address with a smart phone can already have a collection of the wedding pictures. It is a new way of giving a favor to the guests at the event [*sic*].

With respect to the cultural uniqueness of the beneficiary’s performance and events, the petitioner stated:

The [REDACTED] competition is an event that [the beneficiary] was hired to be the photographer (see Exhibit 1). The event is called the [REDACTED]. The winner gets a cash prize. His or her name gets published in the e-magazine and on the web. In due time, this competition will grow as other competition will grow until a lot more participants

involve. The attached photographs are consisting of a small collection of pictures [the beneficiary] took using his iphone. Again the iphone is used so that the participants can have an e-magazine sent simultaneously to their smart phone even as the event is going on.

The same format of a magazine is now a part of a social media such as Facebook, Instagram, Tumblr and Twitter, so that not only the participants be the recipients of these photographs but all of their friends and acquaintance and event audience and followers are informed of these activities and therefore becomes a different level a social participant of this social event [sic].

With the RFE response, the petitioner submitted, *inter alia*:

- An advertisement for [REDACTED] which states, in pertinent part, that “[REDACTED] is a yearly event that brings hundreds of fighting game enthusiasts from around the world in a dazzling exhibition of skill and dedication” for a three day open format tournament;
- Pictures of [REDACTED] taken by the beneficiary;
- Pictures of a friend’s wedding taken by the beneficiary. The petitioner asserted that the beneficiary was “asked to use only his iphone in the wedding” and that “the advantage of this is the simultaneous sharing of photography with the participants of the wedding;”
- A “proposed contract” which the beneficiary would use “in the event that the [instant] P-3 petition is approved,” on the letterhead of [REDACTED]. The company’s website is listed as [REDACTED].
- [REDACTED] of the beneficiary’s “particular culture as well as why this P-3 application is culturally unique,” consisting of a blog entitled [REDACTED] by [REDACTED].
- Letter from [REDACTED], Assistant Professor, [REDACTED].
- Letter from [REDACTED] visual storyteller, photographer, journalist and filmmaker; and
- “Agent/Photographer Agreement” between the petitioner (The Agent) and the beneficiary (The Photographer) which states, in pertinent part, that The Agent will represent The Photographer by sponsoring photographic assignments on behalf of the Photographer, negotiating contracts and fees with the clients, and soliciting and marketing portfolio for sales.

The director denied the petition based on three distinct grounds. First, the director concluded that the petitioner failed to submit adequate affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary’s skills in performing a unique or traditional art form, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Specifically, the director determined that the letters submitted did not adequately detail and/or define any specific characteristics or aspects of the beneficiary’s art form. Second, the director

concluded that the petitioner failed to submit adequate evidence that the performance of the beneficiary is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(B). Specifically, the director determined that the evidence submitted under this criterion were general interviews about the beneficiary rather than about how the beneficiary's performances are culturally unique. Third, the petitioner failed to establish that all of the beneficiary's performances or presentations will be culturally unique events, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

The petitioner subsequently filed the instant appeal on Form I-290B, Notice of Appeal or Motion, accompanied by a brief. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner states the following:

The petitioner addressed the fact that the beneficiary has a unique skill of taking photography and would be in the kind of event that captures the high tech way of doing photographic events using the smart phone rather than using the traditional camera. This is unique. Second, the results would be sent to the participants of the photographic event in a much faster time than the traditional camera driven events can do. The skill and method in taking the pictures which is the performance of it are culturally unique.

Therefore, the case here has met the requirements of culturally unique [*sic*].

The petitioner did not submit any further explanation or evidence in support of the appeal.

III. Discussion

The primary issue to be addressed is whether the petitioner has established that the beneficiary possesses culturally unique skills by submitting the evidence required under 8 C.F.R. § 214.2(p)(6)(ii). Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires the petitioner to 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; and that all of the beneficiary's performances or presentations will be culturally unique events.

A. 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 beneficiary'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 submitted a letter from [REDACTED] Assistant Professor, [REDACTED] who states that he has "years of experience honing [his] ability to

recognize and observe revolutionaries who can successfully rise to the top of their field.” Mr. [REDACTED] then states that the beneficiary is “one of a very small percentage of visual creative who continue to blaze a trail in the area of mobile photography.” He states that while many other professional photographers are struggling to understand and adapt to changes in digital photography, the beneficiary “embraces the new technology and continues to achieve outstanding results.” Mr. [REDACTED] concludes that the beneficiary “is setting the tone and making significant contributions to a new form of digital image-making. [The beneficiary’s] masterful expertise in photography is making ‘iPhoneography’ a valid art form.”

The petitioner also submitted a letter from [REDACTED] visual storyteller, photographer, journalist and filmmaker, who states that he has “been following [the beneficiary’s] work “for quite a while.” Mr. [REDACTED] characterizes the beneficiary as “an important contemporary photographer” and “one of the acknowledged masters and well-known figure [*sic*] in the international mobile photography movement . . . [whose] work has had a clear influence on countless other photographers.” He describes the beneficiary’s photographs, many of which are taken in the streets of San Francisco, as “communicat[ing] vital information about our culture, society and the socioeconomic forces of the city he calls his home . . . [and representing] an important record of early 21st-century San Francisco.”

We agree with the director that these letters fail to meet the requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A). None of the letters specifically describe in factual terms how the beneficiary’s skills are culturally unique. While both letters attest to the beneficiary’s skills in mobile photography, they do not explain the unique cultural elements of the beneficiary’s skills in mobile photography.

Significantly, none of the letters makes any reference to the “hipsters” or “hipster culture,” to whom the petitioner claims the beneficiary’s skills are culturally unique. Similarly, none of the letters makes any reference to the digital speed in which the beneficiary’s photographs can be received using the smart phone as opposed to traditional photographs or e-magazines, which the petitioner also claims makes the beneficiary’s methods culturally unique. In this regard, we note that the petitioner did not submit any reliable evidence establishing that mobile photography or its associated technologies are unique to the “hipster culture.” Although the petitioner cited to a Wikipedia article, it did not provide the actual Wikipedia article. Even if it had, there are no assurances about the reliability of the content from this open, user-edited internet site and, accordingly, we will not assign weight to information for which Wikipedia is the sole source. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Other than a description purportedly derived from Wikipedia, the petitioner submitted no other explanation or documentation regarding the “hipster culture.”

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA

1980).

Moreover, none of the letters explain the basis of the writers' knowledge of the beneficiary's skill, as required by the plain language of 8 C.F.R. § 214.2(p)(6)(ii)(A). *See also* 8 C.F.R. § 214.2(p)(2)(iii)(B) (that all affidavits submitted with a P petition "shall specifically describe the alien's recognition and ability or achievement in factual terms" and "must also set forth the expertise of the affiant and the manner in which the affiant acquired such information"). Mr. [REDACTED] does not address how he acquired knowledge of the beneficiary's skills, and Mr. [REDACTED] statement that he has "been following [the beneficiary's] work "for quite a while" is too general to set forth the actual manner in which he acquired information about the beneficiary's skills.

For all the above reasons, the submitted affidavits are insufficient to satisfy the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

B. Reviews in newspapers, journals, or other published materials

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

The petitioner submitted three documents that could be construed as reviews in newspapers, journals, or other published materials: two transcripts of interviews with the beneficiary published online; and a blog entitled [REDACTED]

In [REDACTED] published on [REDACTED] the interviewer asks the beneficiary about his personal background, formal training in photography, influences, style, specific pictures he has taken, thoughts on mobile photography, and being an "iPhone purist," among other topics. The beneficiary states, in part, that he was "never really" formally trained in photography, but he got interested in "technical stuff of a digital camera" which led him to continue learning about it "by gathering information from the Internet and just shooting just about everything." With particular respect to mobile photography, which the interviewer described as a "very young art form," the beneficiary stated that he "found out about mobile photography around 2 years ago when [he] was trying out some apps on [his] iPhone 3G," and developed his art form more when he downloaded Instagram in January 2011 and began taking more pictures with his iPhone 4. The beneficiary states that he encourages people to take mobile photography more seriously and to worry less about having better gears and equipment, stating "[s]ince most of us have a mobile phone equipped with a camera, why not use it to create images and learn the important aspects of photography itself such as composition and lighting." The beneficiary also states that he only posts photos taken with his iPhone in order to challenge himself.

In [REDACTED] published on [REDACTED] the interviewer asks the

beneficiary about his method of taking photographs, favorite spots to shoot, style, influences, experience in shooting films, and experience as a street photographer, among other topics. The beneficiary responds, in part, that apart from street photography, he also shoots weddings and shoots films as well. The interviewer asks the beneficiary to give advice to “someone brand new to mobile photography,” to which the beneficiary advises to pick a theme and stick with it, be ready to shoot, and to shoot a lot because it literally costs nothing to shoot with a digital camera. The interviewer acknowledges mobile photography’s value, worth, and place as an “accepted” stream of photography, and asks the beneficiary to comment on how mobile shooting has changed him as a photographer. The beneficiary states that phones are becoming a part of many peoples’ lives, that he is not distracted by arguments against mobile photograph being a genuine art form, and concludes that “mobile photography has become a serious hobby for me for these last couple of years.”

The petitioner failed to explain how these interviews document that the beneficiary’s performance is culturally unique. As the director observed, the interviews are about the beneficiary generally, not about the cultural uniqueness of the beneficiary’s art form. At most, the interviews indicate that mobile photography is a “very young art form” that is performed by many people with smart phones, although there may be differences in techniques (e.g., being a “sniper” or a “machine gun”) and equipment (e.g., “iPhone purists”). However, this information is insufficient to explain what element(s) of the beneficiary’s performance in mobile photography is culturally unique.

Significantly, none of the interviews make any reference to the “hipster” culture, the digital speed in which the beneficiary’s photographs can be received, or any of the other elements which form the cornerstone of the petitioner’s claims that the beneficiary’s performance is culturally unique. Furthermore, while the petitioner asserts that these two interviews were published by “hipster” magazines, the petitioner submitted no background information and evidence about [REDACTED] or [REDACTED] to support this assertion.

Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner submitted a blog entitled “[REDACTED]” This blog briefly discusses the debate about mobile photography, the author’s personal story behind why he chose to engage in photography, and his current interests in mobile photography. It does not specifically mention the beneficiary. The petitioner failed to explain how this blog serves as documentation that the beneficiary’s performance is culturally unique.

Accordingly, the petitioner failed to submit evidence satisfying the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B).

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

In the denial, the director determined that the beneficiary's activities will not all be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C) because the petitioner has not shown that mobile photography is a culturally unique art form.

In response to the RFE, the petitioner stated that the cultural uniqueness of the beneficiary's art form is illustrated by the beneficiary's performance in the [REDACTED]. Specifically, the petitioner claimed that the beneficiary "was hired to be the photographer" for this event to use the iPhone "so that the participants can have an e-magazine sent simultaneously to their smart phone even as the event is going on." The petitioner discussed the "same format of a magazine" found in Facebook, Instagram, Tumblr, and Twitter. However, the petitioner's assertions are unpersuasive. The petitioner does not address why mobile photography and the technology of posting digital photographs on social media is unique to a particular group of persons. It is noted that the [REDACTED] was a gaming tournament unrelated to mobile photography.¹

On appeal, the petitioner reiterates that mobile photography is a culturally unique art form because of "[t]he skill and method in taking the pictures." Specifically, the petitioner states that "the beneficiary has a unique skill of taking photography . . . [in] the high tech way of doing photographic events using the smart phone rather than using the traditional camera." The petitioner also asserts that the method of sending photographs "in a much faster time than the traditional camera driven events can do" makes the beneficiary's performance culturally unique. Again, the petitioner's explanation is not persuasive. The petitioner's explanation does not address why mobile photography and its associated technologies are unique to a particular group of persons. As discussed above, the record is noticeably absent of any objective, reliable evidence establishing that mobile photography and its associated technologies are unique to the "hipsters" in general.

Accordingly, as the petitioner failed to establish that mobile photography is a culturally unique art form, the petitioner failed to establish that all of the beneficiary's activities will be culturally unique pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

D. Explanation of the nature of the events or activities

Beyond the decision of the director, we find that the petitioner failed to submit an adequate explanation of the nature of the events or activities which the beneficiary will perform in the United States, including the

¹ The petitioner also submitted no evidence to corroborate its assertion that the beneficiary was hired to be the photographer for the event. The fact that the beneficiary took photographs of this event does not establish that the beneficiary was hired to do so. It is noted that [REDACTED] is a competition for fighting game enthusiasts, and that the beneficiary is "an avid gamer . . . [who] play[s] video games on a competitive level by competing in events and tournaments, especially fighting games," according to his interview [REDACTED]

beginning and ending dates for the events or activities, as required at 8 C.F.R. § 214.2(p)(2)(ii)(C).²

In direct response to the RFE request for an explanation of the nature of the beneficiary's event or activities, the petitioner stated that the "event" in which the beneficiary will participate is "taking pictures using iphone." This general statement does not adequately explain the nature of the beneficiary's events or activities. The petitioner provided no further information, including the beginning and ending dates, for any specific events that the beneficiary is expected to participate in the United States.

Furthermore, the petitioner asserted that it is a U.S. employer that seeks to employ the beneficiary. In direct response to the RFE request to submit a copy of a written contract or a summary of the terms of the oral agreement between the petitioner and the beneficiary, the petitioner submitted its "Agent/Photographer Agreement" between itself (The Agent) and the beneficiary (The Photographer). However, this agreement does not support the petitioner's assertion that it will employ the beneficiary. The agreement is an agent contract, not an employment contract, and contains no provisions for the employment of the beneficiary by the petitioner. The agreement specifically states that the petitioner will represent the beneficiary as his agent, and will perform duties typical of an agent such as negotiate contracts for the beneficiary and solicit/market the beneficiary's portfolio for sales. In addition, the petitioner submitted the "proposed contract" that would be utilized by the beneficiary "in the event that the [instant] P-3 petition is approved." This proposed contract is presumably from the beneficiary's own company, [REDACTED] under which company the beneficiary will work as a wedding photographer.³ This contract from [REDACTED] further undermines the petitioner's assertion that it will employ the beneficiary.

Considering the lack of explanation and evidence of the beneficiary's events and activities in the United States, as well as the discrepancies regarding the petitioner's intended employment of the beneficiary, the petitioner failed to adequately explain the nature of the events or activities which the beneficiary will perform in the United States, including the beginning and ending dates for the events or activities, as required at 8 C.F.R. § 214.2(p)(2)(ii)(C). For this additional reason, the appeal will be dismissed.

IV. Conclusion

The petitioner failed to submit adequate affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing a unique or traditional art form pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). The petitioner failed to submit adequate evidence that the performance of the beneficiary is culturally unique as evidenced by reviews in newspapers, journals, or other published materials, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(B). The petitioner also failed to establish that all of the beneficiary's performances or presentations will be culturally unique events, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). Finally, the

² The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ In [REDACTED] the interviewer identified the beneficiary's name as [REDACTED] and his website as [REDACTED]

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petitioner failed to submit an adequate explanation of the nature of the events or activities which the beneficiary will perform in the United States, including the beginning and ending dates for the events or activities, as required at 8 C.F.R. § 214.2(p)(2)(ii)(C).

Accordingly, the appeal will be dismissed.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.