(b)(6)

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

[redacted]

Date: MAY 15 2014 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 AAO will dismiss the appeal.

The petitioner filed the instant Form I-129, Petition for a Nonimmigrant Worker, on November 5, 2012, requesting an extension of the beneficiary's status 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. On the Form I-129, the petitioner indicated that it engages in the business of traditional Korean clothing design and manufacturing, and that the beneficiary is employed as a Korean Clothing Designer. The petitioner did not submit any supporting documentation with the initial filing.

On November 23, 2012, the director issued the petitioner a Request for Evidence (RFE), to which counsel for the petitioner responded with a request for additional time to respond, and photographs of the beneficiary preparing traditional Korean clothing.

On April 15, 2013, the director issued a Notice of Intent to Deny (NOID) to the petitioner. First, the director addressed whether the beneficiary is admissible to the United States. The director observed that the beneficiary's resume indicates that she engaged in unauthorized employment, therefore rendering her ineligible for any change of status or extension of status. In addition, based upon a comparison of the beneficiary's passport pages 20 and 21 submitted with prior filings, the director advised the petitioner that the beneficiary appears to have submitted fraudulent documents and willfully misrepresented at least one material fact to procure at least one visa, thereby rendering her inadmissible under Section 212(a)(6)(C) of the Act.[1]

Second, the director addressed whether the beneficiary possesses culturally unique skills and whether her performance is culturally unique. Specifically, the director found that the petitioner submitted no testimonials from experts or published material about the beneficiary's performance, as required under 8 C.F.R. § 214.2(p)(6)(ii) (requiring 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, or documentation that the performance of the beneficiary is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials).

Third, the director addressed whether the beneficiary's performances or presentations will be culturally unique. In concluding that the evidence was insufficient to establish that all of the beneficiary's activities are culturally unique events, the director observed that one of the photographs submitted in response to the RFE showed the petitioner's business as also engaging in alteration and repair services.

On or about May 8, 2013, counsel responded to the NOID by requesting additional time to respond, and requesting complete copies of all documents referred to in the NOID. Counsel asserted that without a full copy of the A-files of the beneficiary and her family, he could not reasonably answer the director's allegations.

On June 21, 2013, the director denied the petition, concluding that the petitioner failed to establish the following: 1) that the beneficiary is admissible to the United States; 2) that the beneficiary possesses culturally unique skills or that the beneficiary's performance is culturally unique; and 3) that all the

[1] Specifically, the director noted the beneficiary's admission stamp submitted with the filing was dated January 19, 1998, whereas copies of the exact same passport submitted with the filing showed an admission stamp dated January 19, 2000.

beneficiary's performances or presentations will be culturally unique. The director entered a separate decision denying the petitioner's request for extension of nonimmigrant status.

On appeal, counsel asserts the following:

> USCIS relies on evidence not in the record and/or not provided to Petitioner or Beneficiary in denying renewal of previously-approved P-3 status. Evidence not in record cannot be rebutted. This is a violation of due process. See 8 C.F.R. § 103.2(b)(16); see also 8 C.F.R. § 103.2(b)(7); Ghaly v. INS, 48 F.3d 1426 (7th Cir. 1995); Dent v. Holder, 627 F.3d 365 (9th Cir. 2010).
>
> USCIS indicates that it believes that Beneficiary engaged in unauthorized work, based upon an error in her resume, which has now been corrected.
>
> USCIS additionally states that no expert opinion was provided regarding cultural and artistic nature of Beneficiary's activities. The record shows that an expert opinion was provided, however.

In support of the appeal, counsel submits a brief and additional evidence. In the brief, counsel challenges the director's determination that the beneficiary is inadmissible to the United States based on discrepancies in the beneficiary's passport pages, stating that the beneficiary "is aware of no such discrepancy." Counsel repeats that the director has not provided copies of the A-files of the beneficiary and her family in response to his requests, and re-requests copies of the A-files.[2] Counsel concludes that the petitioner cannot reasonably answer the director's allegations without such copies. With respect to the other grounds of denial raised by the director, counsel reiterates that the beneficiary's previously submitted resume was "inaccurate," and that the petitioner "has provided an expert opinion regarding the cultural significance of the art form for which it seeks P-3 status for [the beneficiary]- in contradiction to the USCIS allegation that it has not provided such evidence. (See Exhibit 1)." Counsel provides no further explanations with regards to the second and third grounds of denial.

Under "Exhibit 1," the petitioner submits the following:

1. Letter from Professor
2. The beneficiary's old resume;[3]
3. Letter from President of
4. Letter from Senior Pastor of
5. Letter from Senior Pastor of

[2] Counsel acknowledges that the beneficiary has received a copy of her A-file through a FOIA request, but asserts that "this file does not include any information regarding the USCIS' investigation, or allegations, about the alleged discrepancy in her passport." However, the AAO is not a position to address these claims. For disputes regarding FOIA requests, please review the USCIS website "FOIA/Privacy Act Overview" at: http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-privacy-act-overview/foiaprivacy-act-overview.

[3] Under "Exhibit 2," the petitioner submits the beneficiary's new resume, and copies of the director's decisions.

6. Letter from Director of International Affairs,
7. Letter from and
8. Articles on Korean traditional clothing.

Upon review of the record, and for the reasons discussed herein, the AAO will dismiss the appeal.

As an initial matter, the director's findings that the beneficiary engaged in unauthorized employment and is inadmissible to the United States are not properly before the AAO on appeal. The beneficiary's unauthorized employment and inadmissibility to the United States are not proper grounds for denial with respect to the petitioner's request for classification of the beneficiary as an artist or entertainer in a culturally unique program. Instead, these concerns relate to the petitioner's request to extend the beneficiary's nonimmigrant status, over which the AAO has no jurisdiction. 8 C.F.R. § 214.1(a)(3) (requiring every nonimmigrant alien who applies for an extension of stay to establish that he or she is admissible to the United States or that any ground of inadmissibility has been waived); 8 C.F.R. § 214.1(a)(5) (stating that there is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539).[4] As such, the AAO will not reach a determination with respect to these particular findings.

With respect to the director's finding that the petitioner failed to submit required evidence of the beneficiary's culturally unique skills or performances pursuant to 8 C.F.R. § 214.2(p)(6)(ii), the AAO will dismiss the appeal.

On appeal, the petitioner refers to the evidentiary requirements under 8 C.F.R. § 214.2(p)(6)(ii), stating: "USCIS additionally states that no expert opinion was provided regarding cultural and artistic nature of Beneficiary's activities. The record shows that an expert opinion was provided, however. (See Exhibit 1)." The petitioner provides no further explanation in support of this assertion, nor submits any evidence to establish that the director's conclusion was erroneous. The petitioner has not explained how the evidence submitted under "Exhibit 1," which consists of documentation generally describing the Korean traditional Hanbok and letters expressing appreciation for the petitioner's presentations about Korean traditional costumes, constitutes testimonials from experts or published material about the beneficiary's performance, as required under the plain language of 8 C.F.R. § 214.2(p)(6)(ii).

Specifically, the letter from Professor entitled " briefly describes the Korean Hanbok in general, and mentions neither the petitioner nor the beneficiary. The letter from is addressed to the petitioner and expresses interest in "associating with" the petitioner in presenting a series of lectures and demonstrations regarding the history and symbolism of Korean traditional costumes. The letters from and are addressed to the petitioner and express interest and appreciation for the petitioner's presentations about Korean traditional costumes. The letter from is addressed to the petitioner and invites the petitioner to speak about Korean traditional costumes at the 2004 opening general session of the year end celebration. The articles describe the Korean

[4] Even though the director erred by including her findings of unauthorized employment and inadmissibility in her decision on the petitioner's request for classification instead of in her decision on the petitioner's request to extend the beneficiary's nonimmigrant status, the director's error does not give the AAO jurisdiction to consider the merits of the petitioner's extension request.

traditional Hanbok, Korean ceremonial clothing, Korean children's clothing, Korean clothing materials, Korean women's clothing, Korean men's clothing, and Korean official/court clothing in general, and make no reference to the petitioner nor the beneficiary. None of the submitted documents reference the beneficiary individually. These documents do not constitute testimonials from experts or published material about the beneficiary's performance, as required under the plain language of 8 C.F.R. § 214.2(p)(6)(ii).

Finally, with respect to the director's finding that all of the beneficiary's performances or presentations will not be culturally unique considering the petitioner's apparent involvement in alterations and repairs, the AAO considers this issue to be abandoned. On appeal, the petitioner does not contest or address this particular finding. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The petition will be denied and the appeal 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.