



U.S. Citizenship
and Immigration
Services

(b)(6)



SEP 08 2014

DATE:

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:

SELF-REPRESENTED

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 Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act ("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 is engaged in the teaching and performance of Chinese martial arts, referred to in the record as [REDACTED]. The petitioner seeks to extend the beneficiary's P-3 status so that he may continue to serve as a martial arts athlete/performer.

The acting director denied the petition, concluding that the petitioner did not establish that the beneficiary seeks to enter the United States to perform, teach or coach as a culturally unique artist or entertainer at a culturally unique event or events. The acting director also denied the petition because the petitioner did not submit a written consultation from an appropriate labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D).

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner requests approval of the petition based on new documentation.

Upon review, the petitioner has not established that the beneficiary is a culturally unique artist or entertainer or that he is coming to the United States to participate in an event or events which will further the understanding or development of a culturally unique art form. Beyond the decision of the acting director, the record establishes that the beneficiary is neither an artist nor an entertainer, but that he is an athlete, and as such, his proposed activities do not fall within the plain language of the statute at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts." We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that we review appeals on a *de novo* basis).

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) provides, in pertinent part, that:

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.

In addition, 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. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 1, 2013. In a letter submitted in support of the petition, the petitioner stated that the beneficiary will be employed as the petitioner's "Chinese Martial Arts [REDACTED] Instructor/Coach" and that his duties will include "teaching and coaching the martial arts of [REDACTED] to children as well as adults at [the petitioner's school], in [a] group and individually." The petitioner initially provided an itinerary indicating that the beneficiary will also be representing the petitioner's school at various competitions, performances and demonstration events. The beneficiary is a native of China who has been formally trained in Chinese martial arts [REDACTED] since 2002. The petitioner states that the beneficiary has achieved the titles of [REDACTED] and [REDACTED] in China, although the record does not contain documentary evidence of these achievements. The beneficiary has also competed successfully in a number of [REDACTED] tournaments in [REDACTED] and [REDACTED] events.

A. Culturally Unique Program

The evidence of record supports the acting director's conclusion 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).

Specifically, the regulation at 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. Regardless of which form of evidence is submitted, the evidence must establish that the beneficiary presents, performs, teaches or coaches 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 petitioner's evidence will be discussed below.

1. Affidavits, testimonials or letters from recognized experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) allows 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. The petitioner initially submitted two testimonial letters, its employment agreement with the beneficiary, an itinerary and evidence of the beneficiary's awards and certificates as evidence of the authenticity of his culturally unique skills.

In reference to the submitted letters, the first letter is from [REDACTED] President of the [REDACTED]. Mr. [REDACTED] describes the beneficiary as follows:

[The beneficiary] is a world recognized Chinese martial artist who has made significant contributions to the development and promotion of Chinese martial arts [REDACTED] in China and the US through his performing, judging, and teaching. He has served as a distinguished judge at our national and international competitions and earned high praise from his colleagues for his adherence to the highest principles of sportsmanship and martial ethics. He has also performed to considerable acclaim at our [REDACTED] demonstrations.

Mr. [REDACTED] concludes by stating:

[The beneficiary's] continuous training, teaching and judging in the United States is very important in promoting and preserving this unique culture (sic) heritage in the world.

The petitioner also submits a letter from [REDACTED], principal of [REDACTED], [REDACTED], [REDACTED] China, and Committee Member of the [REDACTED]. Mr. [REDACTED] states that the beneficiary worked at [REDACTED] as the [REDACTED] of its martial arts athletes from 2009 to 2010, and discusses the beneficiary's accomplishments and duties with the academy. Although the petitioner's support letter states that "[REDACTED] letter also discusses the cultural uniqueness of the Chinese martial arts," upon review Mr. [REDACTED] letter does not contain this discussion.

The acting director issued a request for evidence ("RFE") on August 12, 2013, requesting a detailed statement from the petitioner citing the cultural/artistic/ethnic aspects of the offered position. The petitioner responded to the acting director's request on November 7, 2013, asserting that its original support material was sufficient for the extension petition. The petitioner stated "[the beneficiary's] appropriate qualifications, knowledge and experience in providing support services as a culturally unique Chinese martial arts instructor have been approved by USCIS for his previous petition of May 2011, filed by [the petitioner]." The petitioner's response also included a summary of the beneficiary's activities for the petitioner since May 2011, additional background information regarding the petitioner and the beneficiary, and a schedule of activities at the petitioner's martial arts school.

The acting director denied the petition on November 21, 2013, concluding that the evidence of record did not establish that the beneficiary seeks to enter the United States to perform, teach or coach as a culturally unique artist or entertainer at a culturally unique event or events. The acting director noted that the two individuals providing testimonial letters, while attesting to the authenticity of the beneficiary's skills as a martial arts athlete and teacher, did not attest to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional art form. The acting director also noted that these individuals did not include their credentials as an expert and the basis of their knowledge of the beneficiary's skill.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "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." As a matter of discretion, USCIS may accept expert opinion testimony.¹ USCIS will, however, reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'"); see also *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 805 (AAO 2012) (holding that the petitioner bears the burden of establishing by a preponderance of the evidence that the beneficiaries' artistic expression, while drawing from diverse influences, is unique to an identifiable group of persons with a distinct culture; it is the weight and quality of evidence that establishes whether or not the artistic expression is "culturally unique.")

In *Matter of Skirball Cultural Center*, the AAO found sufficient scholars' letters explaining in detail how Klezmer music in general is the music of a specific ethnic group of people, and how the Argentine version, which combines Eastern European roots with native Argentine culture, produces a unique Jewish Argentine music. *Id.* at 802-03. On appeal, the petitioner asserts that its goal is to "restore the genuine image of Chinese Martial Arts by teaching the authentic Chinese Martial Arts." The record, however, lacks expert letters that detail the culturally unique aspects of [REDACTED] as found in *Matter of Skirball Cultural Center*. Rather, the letters in the record are conclusory. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

¹ Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

While [REDACTED] is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified [REDACTED] coach and athlete trained in China is not sufficient to demonstrate his eligibility for this classification. Here, the two letters submitted cannot be deemed probative of the “culturally unique” nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. Documentation that the performance of the alien or group is culturally unique

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

The petitioner has submitted articles regarding different [REDACTED] tournaments in the [REDACTED], and a foreign language article containing a picture of the beneficiary, for which the petitioner has not submitted an English translation. The regulation at 8 C.F.R. § 103.2(b)(3) states, “*Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.” Because the petitioner failed to submit certified translations of the document, this evidence has no evidentiary or probative value in this proceeding.

The regulation allows the petitioner to submit evidence that the beneficiary's performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. The petitioner has not submitted any published materials that mention the beneficiary by name, and thus it has not satisfied this criterion.

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

The acting director determined that the beneficiary's proposed performances or presentations as a martial arts athlete/instructor will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

The evidence of record supports the acting director's determination. The “events” in which the beneficiary will participate are daily martial arts classes for students of various levels, at which he will not be “performing” or “presenting” as an artist or entertainer. In addition, the evidence does not establish that a [REDACTED] class is a culturally unique event.

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be performing “[REDACTED]” and establishing that he was trained in the sport in China. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment event for which his services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance and the event itself are 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). Vague references to the “cultural uniqueness of the Chinese martial arts” are insufficient to establish the beneficiary's eligibility.

The petitioner requests approval of the petition based on new documentation submitted on appeal, which includes biographical materials for the two individuals who provided testimonial letters in support of the petition. Upon review, the record supports the acting director's finding that the petitioner did not establish that the beneficiary will be performing as an artist or entertainer at culturally unique events. While the submitted evidence now addresses the credentials of the authors whose letters support the petition, it does not indicate how the beneficiary's style of artistic expression, methodology, or medium is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons, such that it could be affirmatively determined that it is culturally unique.

Based on the foregoing, the petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

B. Consultation with a Labor Organization

The acting director also denied the petition because the petitioner did not submit a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D).

The petitioner indicated on the Form I-129 that it had obtained the required written consultation. However, in denying the petition, the acting director noted that, although not requested in the RFE, the petitioner had not submitted a written consultation from an appropriate labor organization. The acting director's decision provided the petitioner with the name and address of an appropriate labor organization.

On appeal, the petitioner has not submitted a written consultation from a labor organization. Therefore, the petitioner did not submit evidence to meet the labor consultation requirement. Consequently, the appeal will be dismissed on this additional basis.

C. Artist or Entertainer

Beyond the decision of the acting director, the beneficiary does not qualify for P-3 classification because he is not seeking solely to perform, teach, or coach as a culturally unique artist or entertainer in the United States, as required by section 101(a)(15)(P)(iii) of the Act. Section 101(a)(15)(P)(iii)(I) of the Act provides P-3 classification to aliens who perform as *artists or entertainers*, individually or as part of a group, or as an integral part of the performance of such a group. The term “arts” includes “fields of creative activity or endeavor” and includes, but is not limited to, fine arts, visual arts, and performing arts. See 8 C.F.R. § 214.2(p)(3). The petitioner has not explained how the petitioner's school is dedicated to the “arts” or how the beneficiary's services as an instructor are artistic, rather than athletic, in nature, given the context of the terms and conditions of his employment. While the petitioner's school may teach authentic Chinese martial arts, the petitioner has failed to explain or demonstrate why the beneficiary, who apparently will spend the majority of his time instructing the petitioner's students, should be deemed an “artist or entertainer” for purposes of this classification.

According to the evidence submitted, [REDACTED] is a sport and wushu sporting events are held at the world, continental, and national levels all over the world. The letter from [REDACTED], discussed above, contains references to the "[REDACTED]" along with references to the beneficiary as a [REDACTED] his students as "martial arts athletes" and Chinese martial arts competitions as "sports meets." Chinese martial arts are not a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. The petitioner has provided evidence that the beneficiary has been successful as a competitive athlete in this field, as evidenced by his awards from the [REDACTED]. The beneficiary is coming to the United States, in part, to instruct students in an athletic discipline and to compete in an athletic discipline. While it appears that some of the events described in the itinerary will require the beneficiary's services as a performer or entertainer, it is evident that he will not be providing services *solely* as an artist, performer or entertainer, as required by the plain language of the statute and regulations. As such, the beneficiary is not an alien who can be classified as a P-3 artist or entertainer, and the petitioner's request to extend the beneficiary's status is not approvable for this additional reason.

III. Prior Approval

The record shows that the beneficiary held P-3 status authorizing employment with the petitioner at the time the petition was filed. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. The prior approvals do not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

In the present matter, the acting director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity. In the notice of decision, the acting director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. at 597. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. Conclusion

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he enter 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 all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that we abused our discretion with respect to all of our enumerated grounds. *Spencer Enterprises, Inc.*, 229 F.Supp at 1043.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.