**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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 2 3 2014 Office: CALIFORNA 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 Director, California 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 classification of the beneficiaries 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 artists or entertainers coming to the United States to perform under a culturally unique program. The petitioner, a self-described entertainment promoter, seeks to employ the nine beneficiaries in a beauty pageant for a period of one week. Five of the named beneficiaries are performers, identified in the petitioner's supporting documentation as a model, two comedians and two singers. The remaining four named beneficiaries are identified in the petitioner's supporting documentation as three make-up artists and a fashion designer.

The director denied the petition, concluding that the petitioner failed to provide evidence to establish that the beneficiaries possess culturally unique skills or that their all of their performances or presentations in the United States will be culturally unique events. The director also found that petitioner did not submit a written consultation from an appropriate labor organization with regard to four of the named beneficiaries.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that the beneficiaries as a group are culturally unique and that their performances in the United States will "support and maintain the Vietnamese culture in America and over-sea [sic] countries." The petitioner asserts that its claims are substantiated by the evidence of record, and requests approval of the petition based on further documentation the petitioner submits on appeal.

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.

The regulation extends the P-3 classification for aliens who provide essential support to the principal P-3 artists or entertainers. The regulation at 8 C.F.R. § 214.2(p)(3) states, in pertinent part:

> *Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [sic] alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

With respect to the filing of P classification petitions in general, the regulation at 8 C.F.R. § 214.2(p)(2)(i) states, in pertinent part:

> Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition.

The petitioner filed the instant petition on November 12, 2013. The petitioner submitted evidence in support of the petition, including a poster and a sample ticket for its pageant event scheduled for January 3, 2014.[1] On the instant petition the petitioner generally described the beneficiaries as "special guest performers and makeup artists as a group called ' and described their performances as follows:

> The is a rich cultural pageant event that celebrates the inner and outer beauty among Vietnamese women who are married or a single mom or a business woman with the goal of producing positive role models and ambassadors of good will for the community. Our pageant promotes self-confidence, self-worth, and traditional values in our contestants and [sic] along with awarding winners for first place, runner-ups, and other titles such as Our winners will receive prizes, gifts, and cash.

In a November 20, 2013 request for evidence (RFE), the director requested that the petitioner provide, *inter alia*: (1) evidence that the beneficiaries will be coming to the United States to participate in a cultural event or events that will further the understanding or development of their art form; and (2) written contracts or the summary of the terms of an oral agreement specifying the terms and conditions of the beneficiaries' proposed employment.

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[1]The petition indicates that the petitioner seeks to employ the beneficiaries for the period from December 28, 2013 to January 4, 2014, for the pageant to be held on January 3, 2014 at California. On appeal, the original event date having passed, the petitioner states that it seeks to employ the beneficiaries for an additional pageant to be held on March 21, 2014 at The petitioner also explains that "[w]e only produce two pageant events per year and only hire people to run the show for those particular days, not the whole year."

In response to the RFE, the petitioner submitted its contract with each of the beneficiaries and evidence in support of the beneficiaries' qualifications.[2] The petitioner's contract with states that the beneficiary will perform "as a model for a fashion show of modern and traditional Vietnamese outfits." The contracts for state that each "will perform a comedy skid [sic]." The contracts for state that each "will perform a solo song." The remaining contracts pertaining to the four support personnel summarized their respective duties as make-up artists and a fashion designer.

The petitioner submitted supporting documentation for each performing beneficiary which included publicity photographs, articles and interviews excerpted from various Vietnamese publications which appear to be of the popular culture variety. The articles contain some reference to each beneficiary's particular performance style. For example, an article regarding beneficiary mentions that in addition to comedy he is "a multi-talented artist with many different areas as a singer, actor, MC" and scriptwriter. Beneficiary performs folk and pop music, beneficiary is an actress and model, and beneficiary acted and sang in a pop music video. An article pertaining to beneficiary Tung Thanh Ngo shows him modeling the "hipster" style of dress, described as "most popular in New York." There is nothing in the documentation submitted to suggest that any of the performers have ever worked together in any capacity.

The petitioner also provided two letters dated December 13, 2012, from from the . One of the letters is for the five performing beneficiaries and the other is for the four essential support personnel. In the letter on behalf of the five performing beneficiaries, Ms. noted that she reviewed the draft I-129 petition and supporting documentation and noted the following:

> The information . . . establishes that presents a unique performance representative of the cultural heritage and musical traditions of Vietnam. Based upon the applicable statutory and regulatory requirements, these artists appear to meet the standards of distinction set forth at 8 C.F.R. S 214.2[(p)].
>
> Accordingly, has no objection that this petition be granted to the performers listed above. This letter is not meant to include any support personnel for which a separate Consultation is required.

As noted by the director, Ms. consultation on behalf of the four support personnel evaluated them "under the P-3S classification," as essential support personnel. *See* 8 C.F.R. § 214.2(p)(3).

The director denied the petition on January 6, 2014, concluding that the petitioner submitted no evidence that the beneficiaries' artistic field is culturally unique as defined at 8 C.F.R. § 214.2(p)(3).

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[2] In response to the RFE, the petitioner listed only eight beneficiaries. On appeal the petitioner stated that the nine named beneficiaries on the petition "are the correct personnel that we want to sponsor for this upcoming show."

Specifically, the director found that the petitioner did not meet the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii). The director determined that the petitioner did not 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, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). In addition, the director found that the record does not contain any evidence that could, in the alternate, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), as the petitioner has not submitted any documentation that the performance of the group is culturally unique, in the form of reviews in newspapers, journals, or other published materials. The director noted that the submitted articles "do not appear to discuss any of the beneficiaries' skills in performing a culturally unique art form nor do they document any of their performances as culturally unique." The director further found that the petitioner has not established that all of the beneficiaries' performances would be culturally unique events, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

On appeal, the petitioner requests approval of the petition based on new documentation regarding the beneficiaries and the petitioner, including a nine-day schedule of events for its March 2014 pageant event, and additional press releases, publicity photographs, and articles excerpted from various Vietnamese publications with qualifying translations. The petitioner asserts that the submitted evidence establishes that the beneficiaries qualify as performers under a program that is culturally unique. The petitioner states that their performances in the United States will "support and maintain the Vietnamese culture in America and overseas" and that the petitioner produces "culturally unique pageant events for the Vietnamese community around the world." Specifically, the petitioner asserts:

> [The petitioner] has presented numerous beauty pageant events since 2011. Our main goal is to support and maintain the Vietnamese culture in America and over-seas countries. Our events are rich culturally unique pageant events that celebrate the inner and outer beauty among Vietnamese women world-wide. The contest consists of 3 main parts: Traditional Vietnamese dress – the Ao Dai, evening gown and bikini. 'The Ao Dai is a Vietnamese national costume, now most commonly worn by women . . . originally applied to the outfit worn at the court of the Nguyen Lords at Hue in the 18th century.'

Press releases pertaining to the petitioner's March and August 2014 pageant events state that "contestants gently convey the beauty of Vietnamese culture so delicate and subtle to the audience through the contest" and "this year's competition . . . will transmit the beauty of Vietnamese culture and subtle deep to the audience through the contest. Contestants compete to find the most deserving person for the royal throne of beauty queen." An additional press release pertaining to the petitioner's August 2014 pageant event asserts that the competition is inspired by "traditional culture of patriotism, solidarity towards ethnic origins together build a prosperous homeland." It describes the beauty pageant event as "a cultural activity that has a strong influence and [sic] overseas Vietnamese community worldwide" and states that the petitioner's pageant event will "try the best to give the audience a useful playground, the sense and feel closer after years away from home." While the press releases praise the experience of the petitioner's beauty pageants, including the beauty of the contestants and the talent on display, they do not mention the pageants as a culturally unique Vietnamese art form and do not state that the pageants are somehow unique to that country.

The petitioner submitted an additional article pertaining to beneficiary indicating he performed as a model in the previous pageant competitions of the petitioner in 2012 and 2013, that his performance was favorably received, and that his performance in the petitioner's future pageant events will include wearing "traditional Vietnamese dress – Ao Dai . . ." The article contains a publicity photograph of beneficiary apparently in a traditional Vietnamese national costume.

Upon review, and for the reasons discussed herein, the evidence of record does not establish that the beneficiaries, individually or as a group, are skilled in performing a culturally unique art form.

The first issue is whether the petitioner has met the evidentiary requirements for this visa classification as set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Specifically, 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill. The record lacks any evidence that could satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A). The letter from AGMA does not satisfy this evidentiary criterion. The "no objection" letter from AGMA satisfies the petitioner's burden to submit a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D) on behalf of the five performing beneficiaries. Consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. 214.2(p)(7)(i)(D). The AGMA's unsupported statement that the beneficiaries "present a unique performance representative of the cultural heritage and musical traditions of Vietnam," is insufficient to establish that each of the five performing beneficiaries' performances is "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D. D.C. 1990). In *Matter of Skirball Cultural Center,* 25 I&N Dec. 799, 805 (AAO 2012), we 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. The record for the instant petition lacks expert letters that detail the culturally unique aspects of the beneficiaries' performance for the petitioner, as found in *Matter of Skirball Cultural Center.* Based on the foregoing, the petitioner has not submitted testimonial evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

In addition, the evidence of record does not, in the alternate, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), as none of the submitted press releases, publicity photographs, and articles establish that the beneficiaries' performances are culturally unique. The petitioner has submitted articles from Vietnamese popular culture publications; however, as noted above, the beneficiaries all sing, act and model in modern, mainstream styles that have not been shown to be culturally unique to Vietnam. The fact that their performances for the petitioner are in the Vietnamese language is insufficient to establish that their performances are culturally unique. There is no legal authority suggesting that all foreign singers who perform in their native language would qualify for the P-3 classification as "culturally unique" performers. Similarly, the fact that part of their performance for the petitioner may be in traditional Vietnamese dress is insufficient to establish that their performances are culturally unique. While some of the articles provide reviews of the beneficiaries'

performances, they do not specify how the beneficiaries' performances in the United States would be culturally unique to Vietnam. The petitioner's assertions that its events are "rich culturally unique pageant events" that "support and maintain the Vietnamese culture in America" are not substantiated by any documentary evidence and are conclusory. USCIS need not accept primarily conclusory assertions. *1756, Inc.,* 745 F. Supp. at 15.

The beneficiaries appear to be a selection of well-known Vietnamese performers, rather than a group with experience in delivering a culturally unique performance. Therefore, the record supports the director's conclusion that the petitioner's claims fail on an evidentiary basis. 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'l Comm'r 1972)). Based on the foregoing, the petitioner has not submitted reviews or other published materials documenting that the beneficiaries' performance is culturally unique, as required by 8 C.F.R. § 214.2(p)(6)(ii)(B).

The second issue in this matter is whether the petitioner has established that all of the beneficiaries' performances would be culturally unique events, pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). The petition indicates that the petitioner seeks to employ the beneficiaries for the period from December 28, 2013 to January 4, 2014, for the pageant on January 3, 2014 at California. On appeal, the original event date having passed, the petitioner states that it seeks to employ the beneficiaries for an additiona pageant at the same venue on March 21, 2014. Press releases pertaining to the petitioner's March 2014 event state that the pageant "is for Vietnamese women aged 29 to 58, from around the world." Additional documentation on appeal indicates that the petitioner plans a ' ' on August 9, 2014 at a venue in California.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) specifically requires "evidence that all of the performances or presentations will be culturally unique events." The submitted contracts between the petitioner and each beneficiary identify the venue for the January 2014 performance and the nature of each beneficiary's performance. There is nothing in the contracts that would lead to a conclusion that the beneficiaries are coming to the United States to participate in events that are culturally unique, nor is there independent evidence, such as a contract between the petitioner and the venues, which describes the culturally unique nature of the performances to be provided by the beneficiaries. Based on the evidence in the record, it is more likely than not that the beneficiaries are coming to perform modern pop songs and comedy routines in their native language, and to model modern fashion and traditional Vietnamese dress, as part of a beauty pageant for the entertainment of the patrons of the theaters at which they will perform, rather than to "support and maintain the Vietnamese culture in America" as claimed by the petitioner. There is no evidence in the record that describes, specifically, the type of modelling, music or comedy routine to be performed at the scheduled pageants or how each beneficiary's performance will be culturally unique.

The petitioner's evidence in this regard consists of the petitioner's conclusory statements that the beneficiaries' performance is unique to the cultural heritage and traditions of Vietnam and the consultation letter from The petitioner bears the burden of establishing through the submission of evidence that the beneficiaries' performances and presentations and the events

themselves 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). The petitioner has not demonstrated based on the evidence provided that the intended performances would be culturally unique. Based on the foregoing, the petitioner has not established that the beneficiaries will be presenting or performing at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). For this additional reason, the appeal will be dismissed.

An additional issue addressed by the director is that the petitioner made an error, in preparing and filing the petition, in including four essential support personnel (the three make-up artists and one fashion designer) on the petition filed for the five principal beneficiaries. The regulation at 8 C.F.R. § 214.2(p)(2)(i) states that essential support personnel may not be included on the petition filed for the principal alien(s); such aliens require a separate petition. The petitioner acknowledges this error on appeal, stating it is applying "for a P-3/P-3S petition." In addition, the record clearly establishes the make-up artists and fashion designer beneficiaries could not be considered principal aliens; the description of the duties they will perform in the United States establishes they would be support personnel, and not artists or entertainers eligible for P-3 classification. Finally, as noted by the director, the petitioner has not submitted on their behalf a written consultation from an appropriate labor organization as required by 8 C.F.R. § 214.2(p)(2)(ii)(D); the director noted that the consultation submitted on their behalf evaluated them "under the P-3S classification," as essential support personnel, pursuant to 8 C.F.R. § 214.2(p)(3). The petition is deficient for these additional reasons, and therefore may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 the AAO reviews appeals on a *de novo* basis).

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. 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.