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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-D-P-

DATE: MAY 27, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a performing arts dog show, seeks to classify the Beneficiary, a dog trainer and performer, as an entertainer coming to perform under a culturally unique program. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). This P-3 classification makes visas available to foreign nationals who perform, teach, or coach as artists or entertainers, individually or as part of a group, under a culturally unique program.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not provide: (1) a description of the competitions, events, or performances for the entire period of the Beneficiary's intended employment; or (2) corroboration that the Beneficiary possessed a culturally unique style of artistic expression, methodology, or medium.

The matter is now before us on appeal. On appeal, the Petitioner states:

I did not know that I was using the wrong classification, and after receiving [the] denial, I have corrected [the] classification to O-1. Therefore, I asked [*sic*] that you please grant my I-129.

The Petitioner submits a letter of support, which generally describes the Beneficiary's qualifications and the terms of her proposed employment, and a copy of a consultation from the [REDACTED] which was previously submitted into the record.

Section 101(a)(15)(P)(iii) of the Act, provides for classification of a foreign national having a foreign residence which he or she 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 implementing 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 regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the Petitioner does not identify an erroneous conclusion of law or statement of fact on the part of the Director as a basis for the appeal. Instead, the Petitioner indicates that he understands why the petition was denied and explains that the ultimate focus of the appeal is to seek O-1 classification for the Beneficiary. As the Petitioner does not contend that the Director erred in denying the petition, the appeal will be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

There is no statute, regulation, or precedent that permits a petitioner to change the classification of a petition once the Director has issued a decision. A post-adjudication modification of the requested visa classification constitutes a material change, which a petitioner may not make in an effort to conform to United States Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In addition, the Ninth Circuit has determined that once USCIS concludes that a beneficiary is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, an alternative classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

Cite as *Matter of S-D-P-*, ID# 16750 (AAO May 27, 2016)