

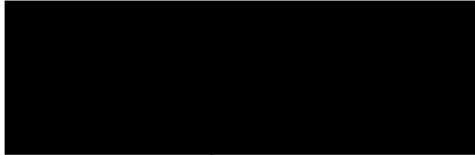
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

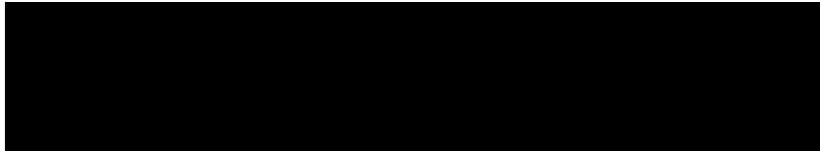
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 16 2010**

IN RE: Petitioner:
Beneficiaries:



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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
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. The AAO will withdraw the director's decision and approve the petition.

The petitioner, a promotions and entertainment company, 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 entertainers in a culturally unique program. The group of beneficiaries, natives of Sierra Leone, includes a singer/musician and members of his band. The petitioner seeks classification of the beneficiaries as P-3 entertainers for a period of six months.

The director denied the petition concluding that the petitioner failed to establish that the beneficiaries' performance is culturally unique or that all of their performances in the United States would be culturally unique events. Specifically, the director found that the petitioner failed to meet the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii). In denying the petition, the director observed that "contemporary popular music is not unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the principal artist's "medium of exchange is unique to his mastery of the local dialects of Sierra Leone, his artistic proverbs and how he delivers them to relate to the social, political and economic issues of his native Sierra Leone." The petitioner submits a statement and additional evidence 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.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

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.

Finally, 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 record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a request for additional evidence (RFE) dated July 2, 2009, the petitioner's response to the RFE, the director's decision dated July 24, 2009, and the petitioner's appeal. The record of proceeding includes a written consultation from a labor organization and a written agreement between the petitioner and the beneficiaries' group, as required by 8 C.F.R. § 214.2(p)(2)(ii).

II. "Culturally Unique"

The first issue to be addressed is whether the beneficiary group's performance is culturally unique. The director, without acknowledging any of the evidence submitted pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), noted that the beneficiaries are "popular music artists in Sierra Leone," and determined that "contemporary popular music is not unique to a particular country, national, society, class, ethnicity, religion, tribe or other group of persons."

Upon review, the petitioner has submitted sufficient evidence to establish that the beneficiaries' performance is culturally unique. The AAO will withdraw the director's determination with respect to this issue.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiaries' performance is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work or other published materials. The petitioner has submitted primarily published materials about the principal beneficiary, Emmerson Bockarie, and his music.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires 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 submitted an excerpt of an article titled "The UN should not abandon fragile Sierra Leone," from the June 23, 2005 issue of [REDACTED], which opens as follows:

Just four months ago [REDACTED] was an unknown undergraduate in Sierra Leone. Then, in February, the musician released an album called [REDACTED] ([REDACTED]), a reference to the corrupt officials popularly held to be hampering the country's development. The song caught Sierra Leoneans' imagination fast, and the album became a best-seller. From the outset, the singer-songwriter says he knew he had a hit. "It was what people were talking about, but didn't have the nerve to say openly."

Public cynicism about the inability of the country's leaders to rebuild this failed state is reflected in the virtual certainty that next week the UN will extend its mandate for a fifth time. Instead of going home on June 30th, as originally scheduled, a reduced force (currently 3,000-strong) will stay on at least until the end of the year

The petitioner also submitted an article from the December 31, 2007 issue of [REDACTED], a Sierra Leonean newspaper:

The latest musical hit that is rocking the radio airwaves and is being played in all the poda-poda business taxis and private vehicles as well as in the homes of Sierra Leoneans is that of [REDACTED] the Sierra Leonean musical superstar who shot to fame with hits like [REDACTED] and [REDACTED] that were both against the perceived corruption in the [REDACTED]. This latest song by [REDACTED] has a refrain in the local Krio parlance which goes: "If Oonar Shake, We Go Wap Oh" [Translated: If you make a false move, we will deal with you].

The song starts off by congratulating His Excellency for winning the elections and assures him that the people were ready to "bato" [cooperate with] him. It then proceeds to warn him in no uncertain terms that just as the musicians and the people railed against the supposedly corrupt [REDACTED], so also would they not hesitate to go against the new APC Government of [REDACTED]

[REDACTED] sings of how human beings can change into thieving rats when they get elected and opines that was what happened to Kabbah's Government. He then warns of dire consequences "If you change pan we lekkeh Kabbah . . ."

It can be recalled that music played an important role in making the SLPP Government become unpopular.

The hit song, [REDACTED] sang about how under the SLPP, a bag of rice was Le60,000 (August 2007) and because of that "high" price, the citizens were going to "give an ejection notice" to the Government.

On appeal, the petitioner submits an article titled [REDACTED] published on March 29, 2007 by PRI's [REDACTED] in connection with the BBC and Public Radio International. The article describes a reporter's visit to several music studios in Freetown, Sierra Leone, and begins as follows:

For those in the know, Sierra Leone used to have a lively musical culture best defined by a lilting folk style called Palm Wine music. But when civil war engulfed the country, music was a long way from everyone's minds there. Five years since the end of that brutal civil war, music is re-emerging in Sierra Leone. The new music may not be as pleasant as that old style, but it's definitely outspoken.

The article goes on to mention the emergence of Sierra Leonean popular music in the years following the civil war, with a noted local record producer, [REDACTED], explaining that the music on television and the radios in Sierra Leone used to be 90 percent American. [REDACTED] established a record company in Freetown in 2000, and states that today "99.9 percent of the music you hear on the radio and see on TV is Sierra Leonean music." The article includes an interview with the principal beneficiary and commentary on his music:

This is the hottest song in Freetown these days. It's called [REDACTED] which means two-footed rats. The artist is [REDACTED]. He's known for his scathing critiques of the government. In the song, he likens candidates in Sierra Leone's upcoming presidential race to rats – trying to get elected by any means necessary.

* * *

[REDACTED] is now 28 years-old.

This is his second album. [REDACTED] says when the war ended, he was hopeful about the future of his country.

[REDACTED] "We were expecting the next government to make a big change but there was no improvement, there's still no improvement."

His first album also target corrupt officials. Other Sierra Leonean artists like [REDACTED] and the [REDACTED] have released politically-themed hits. They write about the lack of electricity and jobs five years after the war.

[REDACTED] produced [REDACTED] and 40 other albums. He says when he founded [REDACTED] in 2002 he urged artists to speak out.

[REDACTED] "They suddenly had these guys doing the lyrics and playing it in the dance clubs. It was like yes, this is what we want to hear, we are tired of all the lies we're being told. We want people who will say what we want to way. We are like the voiceless so you people and musicians we are happy for you, you are giving us voices now."

[REDACTED] says the success of this music is a sign that things are starting to change in Sierra Leone.

An article published on the Norwegian website [REDACTED] indicates that "[REDACTED] has been compared to [REDACTED], [REDACTED], and [REDACTED], to name a few political activists." The petitioner also submits a biography of the beneficiary published in the Sierra Leonean publication [REDACTED] which discusses the beneficiary's most recent work:

The title tracksong of the new [REDACTED] is an 8-minute assessment of the state of Sierra Leone after 10-odd years of SLPP governance, which brought hardly any progress at all, apart from the final achievement of peace announced in 2002, to the disappointment of millions of Sierra Leoneans. The album is also full of many other elections awareness lyrics that include commentaries such as "wi no geh dowt say Salone bless, bot di leaders nah dem lawless, dem jus dae member dem sef, dem forgeh bot di kontri in progress" (meaning we have not doubt that Sierra Leone is bleed [with an abundance of nature and human resources] but it's the leaders who are [greedy and] lawless, they only think about themselves, and forget about the country's progress). [REDACTED] means two-legged rats and is an indication of thieving leaders and civil servants who embezzle public funds, similarly to its predecessor, [REDACTED].

The song, by itself, was an education to the voters of SL, cautioning them to be wary of who and what they vote for in the 2007 national presidential and parliamentary elections. Possibly to some extent heeding his warning and looking deep within themselves, Sierra Leoneans voted for change, echoing the lyrics "Nah mi dae can mi vote for res?" (Do they expect me to sell my vote for rice)? In the narrative that the song starts off with.

* * *

With the British Council-hosted Bring the Noise project that he is currently representing Sierra Leone in, he has the opportunity to make his mark not only in his native Sierra Leone but potentially in the entire continent of Africa. [REDACTED] has helped to make Sierra Leoneans devoted to their country proud in 2007. He now moves forward to apply the same magic in other reaches of the African continent.

The director determined that the beneficiaries do not possess a culturally unique style of artistic expression. The director noted that the beneficiaries are "popular musical artists in Sierra Leone," and that many of their songs "deal with government leaders and corruption." The director concluded that "contemporary popular music is not unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons," or that they would be performing at "culturally unique events" in the United States.

On appeal, the petitioner states:

[REDACTED] medium of exchange is unique to his mastery of the local dialects of Sierra Leone, his artistic proverbs and how he delivers them to relate to the social, political and economic issues of his native Sierra Leone has earned him an iconic status with international appeal to Africans in the Diaspora, especially, Sierra Leoneans.

III. Analysis

Upon review, the AAO will withdraw the director's decision and approve the petition. The regulations define "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. 8 C.F.R. § 214.2(p)(3). The AAO can find no justification for the director's exclusion from this definition an artistic expression solely because it is contemporary or popular.

Of course, the petitioner bears the burden of establishing through submission of evidence that the beneficiaries' artistic expression, while perhaps presented in a contemporary or popular style, is in fact unique to an identifiable group of persons with a distinct culture. The director's decision failed to note that the beneficiaries' group is part of a movement of popular music in Sierra Leone that is unique to that country's post-civil war society and the social, economic and political views held among a significant segment of its population.

The AAO finds the article published by [REDACTED] particularly persuasive. The article explains how Sierra Leonean youth, after a ten-year civil war, are producing a new style of popular music as an outlet to speak out against government policies and leaders. The music is embraced by and considered reflective of the views of the Sierra Leonean people and has quickly replaced American music in the country's popular culture. The article identifies the beneficiary as being at the forefront of this movement of socially and politically-charged music, and names other Sierra Leonean artists who have released politically-themed music. Therefore, the record establishes that there is a style of popular music that is unique to the contemporary culture and society of Sierra Leone. Although the director focuses on the contemporary nature of the beneficiaries' music, there is clearly a distinction between typical popular dance music and music that, based on its message and lyrical content, is recognized by the international news media, including [REDACTED] and [REDACTED], as an agent of political and social change among a nation of people.

The regulations do not require that an art form be "traditional" in order to qualify as culturally unique. Here, the petitioner has laid a more than adequate evidentiary foundation to support its claim that the music performed by the beneficiary group is representative of an identifiable segment of contemporary culture in the beneficiaries' home country of Sierra Leone. Accordingly, the group's musical performance falls within the regulatory definition of culturally unique.

Finally, as the petitioner has established through submission of the required evidence that the beneficiaries' musical performances are culturally unique, the AAO is satisfied that all of the beneficiaries' appearances in the United States will be "culturally unique events."

IV. Conclusion

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. § 1362. Here, that burden has been met.

ORDER: The petition is approved.