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

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U.S. Citizenship and Immigration Services

[redacted]

APR 19 2010

FILE: WAC 10 092 50636 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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. Under our established procedures any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a theatre group in Chicago, Illinois, 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 petitioner described the beneficiary as "one of the leading performers in a new generation of international circus performers who have developed artful acrobatics and rhythmic gymnastics training into the circus performance arts." The beneficiary performs with hula-hoops combined with contortion and hand balancing. The petitioner seeks classification of the beneficiary as a P-3 entertainer for a period of approximately eleven weeks, to perform in the production of [redacted]

The petitioner originally filed a nonimmigrant petition (WAC 10 050 50657) for this same beneficiary on December 14, 2009. After the director requested additional evidence, the petitioner declined to respond and abandoned the petition. Accordingly, the director denied the petition on February 23, 2010. On February 16, 2010, the petitioner re-filed this current petition (WAC 10 092 50636). Notably, in Part 4 of the Form I-129, the petitioner failed to disclose that the previous petition had been recently filed and subsequently abandoned.[1] Instead, the petitioner referred the director to an older approved petition from 2007 (WAC 08 034 51601).

After requesting additional evidence, the director once again denied the petition. The director concluded that the petitioner failed to meet the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii). Specifically, the director found that the petitioner had failed to submit evidence that the beneficiary's performance is "culturally unique" or that the performances will be "culturally unique" events.

On appeal, the petitioner submits a brief and additional evidence.

**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

[1] The AAO notes that the petitioner signed the petition under penalty of perjury after making this misrepresentation or omission. While there is nothing to prohibit a petitioner from re-filing a new petition after it abandons a previously filed Form I-129, the petitioner must disclose all previously filed petitions on the newly filed Form I-129. A nonimmigrant's admission and continued stay in the United States is conditioned on the full and truthful disclosure of all information requested by U.S. Citizenship and Immigration Services. 8 C.F.R. § 214.1(f).

(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*.

(Emphasis added.)

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 March 11, 2010, the petitioner's response to the RFE, and the director's decision dated March 23, 2010. The petitioner's initial evidence included a written consultation from a labor organization, a written contract between the petitioner and beneficiary, and an itinerary, as required by 8 C.F.R. § 214.2(p)(2)(ii), and the director did not request additional evidence with respect to these evidentiary requirements.

## II. Facts

The director acknowledged that the petitioner submitted numerous newspaper and internet articles about the performance of [redacted]) and the beneficiary's previous role, but noted that none of the articles illustrated how the beneficiary's performance is culturally unique. Despite the director's RFE and the appeal, the petitioner has failed to avail itself of the opportunity to submit new evidence to bolster its claim. Upon review, the petitioner has submitted insufficient evidence to establish that either the beneficiary's performance or the petitioner's [redacted] program is culturally unique. The AAO will affirm the denial of the petition.

As noted by the director, the original petition was accompanied by newspaper articles and letters from the petitioner's staff. As the newspaper articles are incorporated into the record, the AAO will not examine them further in this decision. However, the petitioner's letters merit further review since the director did not discuss them.

In a letter dated October 27, 2009, the Petitioner's tour manager, described the program or theatrical performance as follows:

> As we have done for many years, we continue to augment our performances with special works and interpretations of cultural uniqueness. We are especially pleased to be able to remount [redacted], which we presented in its world premiere performances in 2005. This is an original story by [redacted] and Lookingglass ensemble member, [redacted] which will be co-directed by both creators. The world's elite circus performers, including veteran members of the [redacted] will be returning to Chicago for this occasion. This production is a unique presentation of a theatrical play by means of circus arts – a circus-theatre event. The production will present evocative storytelling, amazing athleticism and the very highest levels circus artistry to bring the ancient Greek mythological story of Hephaestus to the high wire in this death defying circus

> retelling. In our 2005 presentation, the Chicago Sun-Times called [redacted], "seamless, ingenious and altogether stunning mix of circus arts, music and theatrical storytelling . . ."

The letter continued to describe the beneficiary's performance, as follows:

> [The beneficiary] is one of the leading performers in a new generation of international circus performers who have developed artful acrobatics and rhythmic gymnastics training into the circus performance arts. . . . She combines hoola-hoop [sic], acrobatic, contortion and hand stand artistry with elegance and body-controlled perfection. This makes her performance unique as an artist. She will bring these skills and artistry to the portrayal of the character Aphrodite in our upcoming presentation of [redacted] [The beneficiary] will be paid $1,500 per week for her rehearsal and performance work, plus round trip airfare from Ukraine and housing while she is in Chicago.

The petitioner also submitted a letter dated October 24, 2009 from [redacted] states that, "As [the beneficiary] will be coming from Kiev, it will also provide a meaningful dialogue and cultural exchange in comparing the styles of physical theatre." This letter describes the beneficiary's performance skills as follows:

> Anna's highly advanced skill set is very specific (hula hoop combined with contortion and hand balanacing) and hard to find, and vital for the character we are having her play. Culturally she comes from an area of the world (Eastern Europe/former Soviet Union) that has a long and revered tradition in the circus arts, gymnastics, and rhythmic gymnastics. Many of the circuses that perform in the United States and Canada are peopled with international performers, and particularly countries like the Ukraine, and Russia.

The director also mentions that the beneficiary was selected for the role because the previous performer of the role, a Russian Cirque du Soleil performer, was not available for the performance. She also noted that she would be able to perform the hoops routine that was previously performed by a U.S. circus performer, who was also unable to return for the new performance.

Finally, an undated letter from [redacted] actually emphasizes that the production considered local and national circus performers, rather than specifically requiring a Ukrainian circus artist for some unique cultural aspect of the performance. [redacted] states: "We have looked at many performers for the role, locally, nationally, and international, and [the beneficiary] is who we would like to cast once again to play the role of Aphrodite . . . ." This letter makes no mention of any cultural element in either the beneficiary's artistic performance or the play.

On March 11, 2010, the director issued an RFE. The director premised the request by noting that the P-3 classification applies only to artists and entertainers who are coming to the United States to perform in a commercial or noncommercial program that is "culturally unique." Among other items, the RFE directed the petitioner to submit:

- affidavits, testimonials, or letters from recognized experts attesting to the nature of the culturally unique or traditional art form;

- newspapers, journals, or other published materials to show that the beneficiary's performance is culturally unique;

- evidence that the beneficiary would perform in a cultural event or program that will further the understanding or development of her culturally unique art form; and

- a detailed explanation of the event that the beneficiary would be performing in.

In a response dated March 16, 2010, the petitioner submitted the same letters that originally accompanied the petition. Despite the opportunity provided by the director to bolster its claims, the petitioner submitted no new evidence to address how the program and the beneficiary's performance would be "culturally unique." By itself, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner again submits a very similar letter as an appellate brief.

**III. Analysis**

The sole issue on appeal is whether the petitioner submitted evidence to establish that the beneficiary's performance will be culturally unique and the petitioner's program will be culturally unique.

Upon review, the petitioner has failed to establish either of the conditions required to approve this visa petition: that the beneficiary is a "culturally unique artist or entertainer" and that her performance would be with commercial or noncommercial program that is "culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act. Again, 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 regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by three types of evidence to demonstrate that the beneficiary is a culturally unique artist and that her performance would be in a program that is culturally unique.

First, the regulation at 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 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. None of the submitted letters satisfy this evidentiary requirement. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the submitted letters are obviously from esteemed and successful members of the petitioning organization, the petitioner did not establish that the authors are "recognized experts." Nor did the letters attest with any specificity to the cultural or traditional elements of the beneficiary's performance or the authenticity of her skills. USCIS may reject an opinion or give it less weight only 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. 1988). Here, the petitioner did not establish that the letters are from recognized experts and the letters themselves are not probative of the "culturally unique" nature of the beneficiary's performance. Accordingly, the letters will not be given great weight in this proceeding.

Instead of speaking to the cultural element, the petitioner's letters simply describe the beneficiary's performance as "hard to find" and "unique" and a "perfect fit" for the role of Aphrodite in Hephaestus. The petitioner also states that the beneficiary is needed for the production to replace two performers who were unable to return for the new production. The P-3 nonimmigrant visa classification is not premised on the employment needs of the petitioner, but rather on the presentation of a culturally unique artistic performance.

Second, 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 AAO notes that while the reviews are favorable and from major periodicals, and that some mention the beneficiary by name, the articles fail to illuminate the critical element - that the performance of the alien or group is culturally unique.

Finally, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) requires the petitioner to submit evidence that all of the performances or presentations will be culturally unique events. With respect to this element, the letters emphasize that the performance includes the "world's elite circus performers" and that the beneficiary's participation in the event "will also provide a meaningful dialogue and cultural exchange in comparing the styles of physical theatre." These vague statements do not illuminate how the program is "culturally unique." While a performance with a diverse, international cast might be "cultural" in a broad sense, there is no evidence that the performance is culturally unique. Although the evidentiary requirement is broad and open to any evidence, the petitioner has failed to provide any evidence that the program is directed or performed with the intent of providing a culturally unique event.

The petitioner bears the burden of establishing through submission of evidence that the beneficiary's artistic expression and the event itself, while possibly drawing from diverse international influences, is 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). Here, the petitioner has failed to specifically articulate how either the beneficiary's performance or the production of Hephaestus is culturally unique.

Specifics are clearly an important indication of whether a beneficiary's performance is culturally unique, otherwise meeting the definition would simply be a matter of parroting the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

**IV. Conclusion**

In conclusion, while the petitioner has requested a visa that is premised on the "culturally unique" performance of the beneficiary and the event itself, the petitioner appears to have considered this critical element as an afterthought to their employment needs. The AAO notes that there are other nonimmigrant visa classifications that are not premised on a cultural element. For example, although certain evidence is also required to be submitted the P-1 nonimmigrant visa classification has traditionally been utilized by circus performers. Based on the plain language of Section 214(c)(4)(B)(iv) of the Act, an alien may obtain P-1 classification if he or she is coming to perform with, or constitutes an essential part of, a circus or a circus group. Again, certain, specific evidence must be provided in that instance for a petition to be approved. *See* INS General Counsel Opinion, *Circus Performers*, GenCo Op. No. 94-16, 1994 WL 1753120 (March 3, 1994).

Nothing in this decision should be taken to suggest that the AAO fails to recognize or appreciate the talent the performer possesses, or as an indication that she is not a skilled performer. This denial does not preclude the petitioner from filing a new visa petition, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

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 not been met.

**ORDER:** The appeal is dismissed.