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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

D9

[redacted]

AUG 0 1 2008

FILE: WAC 07 042 52371 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS: This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The California Service Center Director 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 filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classify the beneficiary 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 an artist in a culturally unique program. The petitioner is a floral design company and seeks to employ the beneficiary as a floral designer for one year.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary seeks to enter the United States solely to perform as a culturally unique artist in a culturally unique program. The director determined that the beneficiary will not be performing, teaching or coaching solely in cultural events, and therefore is ineligible for the benefit sought.

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

Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P), provides the terms under which an alien may seek classification as a P nonimmigrant provided the alien has a foreign residence which he or she has no intention of abandoning.

Section 101(a)(15)(P)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii), provides for classification of an alien 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.

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 primary issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is coming to the United States to develop, interpret, represent, coach or teach *as a culturally unique artist in a culturally unique program.* In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States in order to perform, teach, or coach as a culturally unique artist in a commercial or noncommercial program that is culturally unique.

In a letter of support dated November 14, 2006, the petitioner, which is described as a premier design firm providing exclusive and unique event production services, indicated that it intends to employ the beneficiary as a floral designer. The petitioner claimed that the beneficiary's designs are based on the Flemish style that was developed by the old masters of Belgium (Flanders) and Holland. Finally, the petitioner claimed that such designs would be used for a variety of corporate large scale events and gatherings, such as wedding ceremonies, wedding receptions and fundraisers.

Finding the initial evidence insufficient to establish eligibility, on December 5, 2006, the director requested, among other things, that the petitioner provide:

- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities and copy of any itinerary for the events or activities.

- 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.

- Documentation showing that the alien's performance is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

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

In response, the petitioner submitted a letter from counsel dated December 13, 2006 addressing the director's requests. The petitioner submitted several letters from expert floral designers, including (1) [redacted] of Ramberg; (2) [redacted] President Elect of the American Institute of Floral Designs; and (3) [redacted] of [redacted] Decorations. While all three of these persons contend that the beneficiary is skilled in his profession, these testimonials fail to specifically state that the beneficiary's floral designs are culturally unique. Rather, they merely distinguish European flower arranging styles from American techniques, and [redacted] even states about American designs, "Differently from Belgium, it's a whole different approach over there." Again, while these letters show an established admiration for his work, they fail to attest to the authenticity of the cultural uniqueness of the beneficiary's designs.

The record also contains excerpts from books and publications discussing the uniqueness of European floral design and Flemish and Baroque influence. However, these published materials make no reference directly to the beneficiary, but merely discuss the genre in which he claims to be skilled. These excerpts are likewise insufficient to demonstrate the cultural uniqueness of the beneficiary's designs.

Finally, the petitioner submits copies of its itinerary for the coming year, and focuses on these "cultural events" in contending that the beneficiary will be performing culturally unique designs for culturally unique events. The AAO disagrees.

Included on the list are events such as:

Clarke Wedding
- Infirmary Ball
- American Heart Association
- Viennese Opera Ball
- Pear Bar Mitzvah
- American Friends of Israel Philharmonic Orchestra
- Chemotherapy Foundation

This list undoubtedly includes a wide list of varied themes which govern very different types of formal events. However, although it is not disputed that events such as the Viennese ball and the Pear Bar Mitzvah are indeed cultural events in their own right, the fact remains that the petitioner is required to show that beneficiary will participate in cultural events which will further the understanding or development of his or her

art form. It is unclear how the petitioner maintains that preparing floral arrangements for a bar mitzvah or a fundraiser for the American Heart Association will further the development and understanding of Flemish floral design.

On appeal, counsel resubmits the previously submitted evidence and contends that it is sufficient for the same reasons refuted above. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner failed to establish that the beneficiary seeks to enter the United States solely to perform as a culturally unique artist in a culturally unique program. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not satisfied the requirement of submitting a consultation to Citizenship and Immigration Services (CIS). 8 C.F.R. § 214.2(p)(6)(v) states, in pertinent part,

> ***Consultation requirements for P-3 in a culturally unique program.*** Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs. If the advisory opinion is favorable to the alien, it should evaluate the cultural uniqueness of the alien's skills, state whether the events are cultural in nature, and state whether the event or activity is appropriate for P-3 classification.

The petitioner submitted a letter to the International Brotherhood of Teamsters consultation dated November 22, 2006, requesting the required consultation. Counsel for the petitioner claimed that the consultation would be forwarded to the AAO when received; however, as of the date of this decision, a copy of the requested consultation has not been submitted. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied 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. § 1362. Here, that burden has not been met.

ORDER: The appeal is dismissed.