



U.S. Citizenship
and Immigration
Services

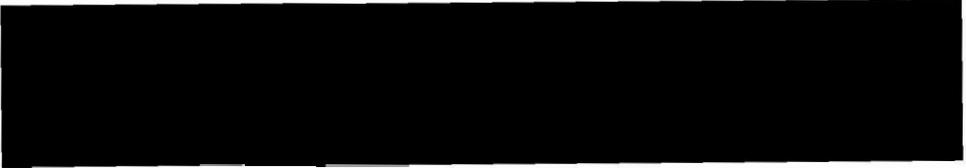
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FILE: WAC 06 159 50735 Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2008

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: 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 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 in this case is an entertainment organization and the beneficiaries are Vietnamese actors, actresses, singers and one beneficiary is also identified as a manager. The petitioner seeks 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 seeks to employ the beneficiaries for one year to perform at various locations within the United States.

The director determined that the petitioner failed to establish that all of the beneficiaries' performances would be culturally unique events.

On appeal, the petitioner submits a letter and copies of documents previously submitted.¹

Section 101(a)(15)(P)(iii) of the Act, provides for nonimmigrant classification of an alien 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 such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique[.]

The term "culturally unique" is defined in the regulation at 8 C.F.R. § 214.2(p)(3), which states, in pertinent part:

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.

Pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(ii), all petitions for P classification must be accompanied by:

(A) The evidence specified in the specific section of this part for the classification;

¹ An immigration service provider prepared the petition and the appeal. Although a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, accompanies the petition, the immigration service provider has not established that he is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

- (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) provides the general requirements for P-3 petitions:

- (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 regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifies the evidentiary requirements for a P-3 petition:

- (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the 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.

To satisfy these criteria, the petitioner submitted numerous copies of published materials and covers of compact discs, digital video discs and other audio and video recordings purportedly about the beneficiaries. All of these materials are printed in Vietnamese and only one document was submitted with a certified English translation.² Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the Vietnamese materials,

² The sole Vietnamese document accompanied by a certified English translation is an interview with the beneficiary [REDACTED].

we cannot determine whether the evidence supports the petitioner's claims. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

We concur with the director's determination that the record does not establish that all of the beneficiaries' performances will be culturally unique events. Beyond the decision of the director, the record also fails to demonstrate that the beneficiaries' performance is culturally unique, that the beneficiaries are a group and that all of the beneficiaries are artists, entertainers or aliens who provide essential support to such artists or entertainers.

1. Evidence of the Beneficiaries' Culturally Unique Performance

In response to the director's Request for Evidence (RFE) of evidence that the beneficiaries' performance is culturally unique, the petitioner explained that affidavits, testimonials, or letters from recognized experts, as specified in the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A), were not available in Vietnam and that consequently, the petitioner submitted evidence pursuant to subsections (B) and (C) of the regulation at 8 C.F.R. § 214.2(p)(6)(ii). However, beyond the director's decision, the record contains no evidence that the beneficiaries' performance is culturally unique pursuant to the regulation at 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(B).

The petitioner submitted a printout from the website of Vietnam Style, which describes six forms of traditional Vietnamese theatrical art: *Ly* folk song, *Cheo* opera, *Tuong (Hat Boi)*, *Cai Luong* (renovated opera), *Quan Ho* and *Hat van*. Yet the record does not show that the beneficiaries have performed in any of these art forms in the past in Vietnam or would so perform in the United States. Rather, the petitioner describes the beneficiaries as performers that:

tell tale [sic] through lyrics in a song, or participate in a skit or play that dresses [sic] in the customary pajamas or customs that are fashionable to the year and place of the event. The beneficiaries will participate in plays as an actor or actress and dresses [sic] in customary clothing to [sic] the Vietnam era. In the plays, the beneficiaries will speaks [sic] and sing opera, or traditional Vietnamese song. Additionally, the beneficiaries would also sing traditionally Vietnamese songs that are separate and apart from the play in the event.

The petitioner provides no further details or documentation regarding the purported culturally unique performance of the beneficiaries.

On appeal, the petitioner claims that the beneficiaries' biographies, the magazine articles and the covers of audio and video recordings show that "the beneficiaries are either singing contemporary songs or participated in theatre plays or video plays that are unique Vietnamese [sic]." The record does not support this claim. The petitioner submitted biographies in English of only three of the beneficiaries. Yet, as noted by the director, the biographies of [REDACTED] and [REDACTED] describe their accomplishments as actors, actresses and singers, but do not provide any probative information about the cultural nature of their performances. The interview with [REDACTED] indicates that he is a young, popular singer, but also does not discuss any cultural aspects of his work.

The remaining published materials and covers of audio and video recordings were submitted without certified English translations and consequently provide no probative evidence. *See* 8 C.F.R. § 103.2(b)(3). On appeal, the petitioner contends that:

Simply viewing the picture in the articles, CD, VCD, or DVD covers either depicting the beneficiaries or showing other character beneficiaries [sic] with the beneficiaries' name as one of the characters are more than sufficient to demonstrate the beneficiaries' qualification.

To the contrary, simply viewing the documentation submitted in Vietnamese shows only that seven of the beneficiaries have made audio recordings or performed in productions in Vietnam. The documents do not establish the requisite cultural uniqueness because the untranslated materials do not show that the beneficiaries perform in a style of artistic expression, methodology, or medium which is unique to Vietnam or a particular society, class, ethnicity, religion, tribe, or other group of persons. *See* 8 C.F.R. § 214.2(p)(3).

On appeal, the petitioner notably intimates that the submitted Vietnamese materials, even if properly translated, would not provide probative evidence because:

most if not all, news and magazine articles tend to be written [sic] about the entertainers' personal life, the ability to perform [sic] and audience attractions. Any written articles about the particular play or song are only to describe the story in the play or song. On a rare occasion will a writer or critic will [sic] bring forth the cultural or historical significance of the play or song. Reasoning is [sic] the intended audiences already know the cultural or historical significance, or are not interested in the cultural or historical significance.

The record provides no certified translations of the Vietnamese documents and the petitioner provided no other probative evidence of the substance of the beneficiaries' work. While the printouts from Vietnam Style describe six forms of traditional Vietnamese theatre, the record contains no evidence linking any of these art forms to any of the beneficiaries' past or proposed performances. Accordingly, the evidence does not show that the beneficiaries' performance is culturally unique pursuant to the regulation at 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(B).

2. Evidence that All of the Beneficiaries' Performances will be Culturally Unique Events

As determined by the director, the petitioner also failed to submit evidence that all the beneficiaries' performances would be culturally unique events, as required by the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C). The petitioner submitted a schedule for the beneficiaries' performances, which lists 18 "live concerts," three "CD recordings" and one "In Studio Filming." The schedule provides no further information about the cultural nature of any of the proposed performances. The petitioner cites the aforementioned printouts from Vietnam Style as evidence that the beneficiaries' performances would all be culturally unique events, but the petitioner fails to demonstrate that the beneficiaries' performances would include any of the traditional Vietnamese theatrical forms discussed in the printouts.

In response to the director's Request for Evidence (RFE) that all the beneficiaries' performances would be culturally unique events, the petitioner stated:

As to the specific music or performance, it is extremely difficult for Vietnamese National [sic] to obtain an entertainment visa for entry into the United States at the American Consulate abroad. Therefore, to prevent from [sic] possible law suit, it is not advisable for entertainment companies or agent to advertise the entertainers and/or performance until the entertainers have obtain there [sic] visas for admission into the United States.

Even if the petitioner's assertion is true, the petitioner fails to explain why other documentation is not available regarding the cultural uniqueness of all the events at which the beneficiaries would perform.

In its RFE response, the petitioner further contended that the regulations "simply required [sic] that the theme of the event or events must have some national significance to the beneficiaries' home country." To the contrary, the statute requires that the beneficiaries enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification under this section of the Act, the petitioner must submit evidence that all of the beneficiaries' performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements.

3. The Beneficiaries are not a Group.

Beyond the director's decision, the petitioner also did not establish that the beneficiaries are members of a group pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(F). With this Form I-129, the petitioner seeks classification of eight beneficiaries. The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(F) prescribes only two situations where multiple beneficiaries are allowed:

Multiple beneficiaries. More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P-1, P-2, or P-3 beneficiaries performing in the same location and in the same occupation.

The regulation at 8 C.F.R. § 214.2(p)(3) defines the term "group" as "two or more persons established as one entity or unit to perform or to provide a service." The petitioner submitted no evidence that the beneficiaries are established as one entity or unit to perform. As mentioned above, we cannot consider the supporting documentation submitted without certified English translations. *See* 8 C.F.R. § 103.2(b)(3). Although the copied materials indicate that some of the beneficiaries have worked with each other on certain productions, the record is devoid of any evidence that all eight beneficiaries have previously worked together as one entity or unit or have otherwise been established as one performance entity or unit. Accordingly, the petitioner has failed to comply with the regulatory filing requirement at 8 C.F.R. § 214.2(p)(2)(iv)(F).

4. *One Beneficiary is Not an Artist, Entertainer or Essential Support Alien.*

Beyond the director's decision, the petitioner also failed to demonstrate that [REDACTED] is an artist, entertainer or essential support alien. Section 101(a)(15)(P)(iii) of the Act only provides classification to an alien who "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 who seeks to enter the United States "solely to perform, teach, or coach as such an artist or entertainer or with such a group" under a culturally unique program.

The regulation explicates 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.

The regulation at 8 C.F.R. § 214.2(p)(6)(iii)(B) prescribes the following evidentiary requirements for a petition for a P-3 essential support alien:

- (1) A consultation from a labor organization with expertise in the area of the alien's skill;
- (2) A statement describing the alien(s) prior essentiality, critical skills and experience with the principal alien(s); and
- (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The petitioner failed to establish that [REDACTED] is eligible for P-3 classification either as an artist, entertainer or an essential support alien. On the cover letter accompanying the Form I-129, the petitioner identified [REDACTED] as an actress and manager. Although [REDACTED]'s name is included in the caption of the consultation letter from the American Guild of Musical Artists, the record is devoid of any primary evidence that [REDACTED] is an actress or entertainer. The petitioner submitted a "Portfolio of [REDACTED]" that is printed in Vietnamese and consequently cannot be considered. See 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a document entitled "Agreement ref. cooperation and organization of music performance in the United States between Vinam Company Limited and MS Entertainment." The agreement identifies [REDACTED] as the President and Director of Vinam Company Limited ("Vinam Group") and states that the responsibilities of the Vinam Group are to: 1) select Vietnamese singers and artists for each performance organized by the petitioner in the United States; 2) to organize groups, perform license, exit and entry procedures for Vietnamese artists

going to the United States; and 3) to assume responsibility for the fees of the Vietnamese artists and the expenses arising in Vietnam. The agreement does not indicate that [REDACTED] or the Vinam Group have any responsibilities or will provide any other services to the petitioner or the other beneficiaries in the United States.

The petitioner provides no primary evidence that [REDACTED] performs as an artist or entertainer with the other beneficiaries or is an integral part of their performance and that she seeks to enter the United States to perform, teach or coach as an artist or entertainer with the group under a culturally unique program, as required by section 101(a)(15)(P)(iii) of the Act. The petitioner did not submit a statement describing [REDACTED]'s prior essentiality, critical skills and experience with the principal aliens pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(iii)(B)(2). The record also does not show that [REDACTED] performs essential support services that cannot be readily performed by a United States worker pursuant to the regulation at 8 C.F.R. § 214.2(p)(3). To the contrary, the agreement between the petitioner and the Vinam group indicates that [REDACTED] would have no responsibilities or duties regarding the other beneficiaries during their proposed stay in the United States. Accordingly, the petitioner has not established that [REDACTED] is eligible for classification under section 101(a)(15)(P)(iii) of the Act.

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). In this case, the petitioner failed to submit evidence that all of the beneficiaries' performances or presentations would be culturally unique events, as required by the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C). Beyond the director's decision, the petitioner also failed to submit documentation that the beneficiaries' performance is culturally unique pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B); that the beneficiaries are members of a group pursuant to the regulation at 8 C.F.R. §§ 214.2(p)(2)(iv)(F), 214.2(p)(3); and that all of the beneficiaries are artists, entertainers or essential support aliens, as required by section 101(a)(15)(P)(iii) of the Act and as explicated in the regulation at 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii), 214.2(p)(6)(iii). Accordingly, the beneficiaries are ineligible for nonimmigrant classification under section 101(a)(15)(P)(iii) of the Act and the petition must be denied.

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. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.