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

D9

FILE: WAC 06 172 52572 Office: CALIFORNIA SERVICE CENTER Date **JUN 23 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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 and singers. 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 the performance of the beneficiaries is culturally unique and 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:

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.

- (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) 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 evidence[d] 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, certificates and covers of audio and video recordings, all of which are printed in Vietnamese and were submitted without certified English translations. 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 documents, 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 the performance of the beneficiaries is culturally unique and 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 perform as 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, 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 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 cultural uniqueness of the beneficiaries' performance.

On appeal, the petitioner claims that the copied published materials and covers of audio and video recordings demonstrate the beneficiaries' culturally unique performance. However, as explained above, those materials were submitted without certified English translations and consequently provide no probative evidence. *See* 8 C.F.R. § 103.2(b)(3).

In his decision, the director noted that the record indicated that the beneficiaries were singers of popular contemporary music in Vietnam and stated, "The performance of contemporary music from a given country in a language of that country does not satisfy the requirement of 'culturally unique' necessary for P-3 classification." On appeal, the petitioner contends that the regulations do not require that the style of the beneficiaries' performance must date from a certain era or period of history and the petitioner states, "I can only conclude that for the Service to take such a position, the Service must either be prejudice [sic], races [sic], or ignorance [sic]." While we agree that the

regulations do not require that an alien's performance date from a certain period in order to be considered culturally unique, we do not find any bias in the director's decision. Moreover, the petitioner has not demonstrated that the director's comment resulted in any prejudice to the petitioner that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

The record contains no certified translations of the Vietnamese materials or other probative evidence of the substance of the beneficiaries' work. Accordingly, the petitioner did not submit evidence that the beneficiaries' performance is culturally unique pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B).

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

The petitioner also failed to submit evidence that all of the beneficiaries' performances would be culturally unique events pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C). 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 RFE, 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 fails to meet these evidentiary requirements.

3. *The Beneficiaries as Members of 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 ten 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 _____ 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 a singer. 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 only supporting evidence submitted (apart from [REDACTED]'s identity documents and an unsigned contract between the petitioner and [REDACTED]) is a certificate that is printed in Vietnamese and consequently cannot be considered. See 8 C.F.R. § 103.2(b)(3).

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. In the alternative, 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). 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 the beneficiaries' performance is culturally unique and that all of the beneficiaries' performances or presentations would be culturally unique events, pursuant to the regulation at 8 C.F.R. § 214.2(p)(6)(ii). Beyond the director's decision, the petitioner also failed to submit documentation 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). 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.