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FILE: EAC 03 150 52118 Office: VERMONT SERVICE CENTER Date:

AUG 17 2005

IN RE: Petitioner: [Redacted]
Beneficiaries: [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:



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.

Maif Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a performing arts company. The beneficiaries are three citizens of the People's Republic of China (PRC). The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of the visa petition validity 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 continue to employ the beneficiaries for an additional year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries seek to enter the U.S. on a temporary basis as required by the statute and regulations. The director further found that the petitioner failed to establish that the beneficiaries would solely perform, teach or coach as artists or entertainers in a culturally unique program.

On appeal, the petitioner submits additional documentation.

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.

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.

The first issue to be evaluated in this proceeding is whether the petitioner established that the beneficiary seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or . . . under a commercial or noncommercial program that is culturally unique.

The beneficiaries entered the United States on February 16, 2001, as P-3 nonimmigrants. The three beneficiaries originally entered the U.S. as members of the five-member [REDACTED] Performing Troupe.¹ The petitioner previously filed and received approval for P-3 classification of the beneficiaries. The instant extension petition was filed on April 17, 2003. Finding the evidence insufficient, the director requested that the petitioner submit, among other things, a copy of the beneficiaries' most recent Form W-2 Wage and Tax Statements or Form 1099; evidence that all of the performances or presentations by the beneficiaries in the United States will be culturally unique events; and a complete itinerary of engagements showing the specific dates of each engagement, the name of the actual employer and the name and address of the facility where the beneficiaries will perform.

In response to the request for additional evidence (RFE), the petitioner submitted copies of the beneficiaries' 2002 Form 1040 income tax returns. The Schedule C attachments to the tax returns show that the beneficiaries treat themselves as sole proprietorships. The return for [REDACTED] lists his business as "Peking Opera Performance," and shows that his gross earnings include \$13,040 from opera performances, \$6,240 from tuitions, and \$750 from a seminar. Schedule C from the return for [REDACTED] lists her business as "casual labor," and Schedule C for [REDACTED] return lists her business activity as "personal service." The petitioner failed to submit copies of Form W-2 Wage and Tax Statements and/or Form 1099's for the beneficiaries in response to the RFE.

According to the evidence on the record, the beneficiaries are unmarried and have resided in the U.S. for approximately four years as of the date of the adjudication of the instant appeal. The beneficiaries had been in P-3 status for twenty-six months at the time of the filing of the instant petition. The petitioner did not produce any evidence to establish that it has been paying the beneficiaries for their services. In the absence of corroborating evidence, the petitioner's assertion that it has and will continue to employ the beneficiary on a temporary basis is not credible. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). On appeal, the petitioner submitted a 1099-MISC income tax record from the petitioning organization for [REDACTED] indicating a payment in the amount of \$3,750 in 2002 and a copy of cashed checks to [REDACTED] in the amount of \$1,500 dated October 31, 2002, January 31, 2003, February 28, 2003, March 31, 2003, April 30, 2003, May 30, 2003, June 30, 2003, and September 30, 2003. On appeal, the petitioner submitted a statement from the beneficiary [REDACTED] which states that the beneficiary has a job offer and a house in China. The petitioner failed to submit evidence to substantiate the beneficiary's assertions. It is not enough to make assertions. *Supra*. Counsel indicated that he was attaching a deed of the real property of the beneficiary [REDACTED] and a job offer to the appeal, but the deed was not submitted for the record. The "job offer" is a statement indicating that the beneficiary [REDACTED] "will contribute his valuable and unique professional experience to the Shenyang Peking Opera Institute and the Art of Peking Opera upon his return to China."

¹ The petitioner indicated that three of the troupe members have disappeared, including [REDACTED]

In review, the petitioner has failed to establish that the beneficiaries are coming to the United States on a temporary basis as is required by the pertinent statute and regulations.

The second issue raised by the director is whether the petitioner established that the beneficiaries are seeking to enter the United States to *solely* perform, teach or coach as artists or entertainers 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. As evidence that the beneficiary is seeking to enter the U.S. solely for the purpose of performing, teaching or coaching as an entertainer in a culturally unique program, the petitioner submitted a "projected itinerary." The itinerary covers a five-month period beginning November 30, 2003 and ending on April 25, 2004. The itinerary indicates that the beneficiaries would perform at "Christmas celebrations" in December for residents at a home for the elderly, to the Chinese Catholics at St. Michael's Church in Flushing, New York, and to different Chinese associations. The petitioner failed to establish that the beneficiaries would be performing in a culturally unique program at Christmas time. The itinerary indicates that the beneficiaries would be giving lectures and demonstrations on the Chinese performing arts in the months of March 2004 through May 2004. The petitioner provided no corroborating evidence of these performances. Finally, the petitioner indicated that the beneficiaries would perform in two presentations of traditional Chinese opera. The petitioner also submitted copies of programs held in 2000 and 2001. Each of the three beneficiaries is listed in the programs as members of the cast. The programs were published for two different presentations held on September 8 and 9, 2001 and September 29, 2002 and sponsored by the petitioning organization. The petitioner also submitted copies of programs of other performing arts companies, indicating that one of the beneficiaries [REDACTED] had performed with the Chinese Folk Dance Company on several occasions.

The director found, and the AAO concurs, that the petitioner has shown that [REDACTED] has performed *occasionally* in the United States in Chinese Opera productions, and may continue to perform occasionally. The petitioner has failed to establish that the beneficiaries are seeking to enter the U.S. *solely* to perform, teach or coach under a culturally unique program.

We note that CIS approved other petitions that had been previously filed on behalf of the beneficiaries. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

In review, it must be concluded that the petitioner has failed to overcome the director's bases for denying the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.