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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 09 800 02273 Office: CALIFORNIA SERVICE CENTER Date: MAY 12 2010

IN RE: Petitioner:
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: 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. Please be advised that 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition seeking classification of 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 coming to the United States to present his art under a culturally unique program. The petitioner, an art school, seeks to employ the beneficiary as its Visual Artist-in-Residence for a period of approximately nine months.

The director denied the petition on January 16, 2009, concluding that the petitioner failed to submit any documentary evidence in support of the petition, and therefore failed to meet its burden to establish that the beneficiary meets the requirements for P-3 classification. In denying the petition, the director observed that the petitioner filed the petition using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system, and was therefore was required to submit all required initial evidence to the service center within seven business days.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary "qualifies as an artist of cultural uniqueness based on his pioneering work in the field of Contemporary Art." The petitioner submits various documents in support of the appeal, including an employment offer letter, employment contract, two reference letters from "independent experts," copies of published material written about the beneficiary's work (in French, Spanish and German, without certified English translations), and the beneficiary's detailed resume.

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.

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.

As noted above, the petition was denied based on the petitioner's failure to submit any of the initial evidence required by the regulations pertaining to P classification petitions in general and P-3 petitions in particular. *See* 8 C.F.R. §§ 214.2(p)(2)(ii) and 214.2(p)(6)(ii).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on December 5, 2008. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

> Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission...

The regulation at 8 C.F.R. § 103.2(b)(1) states:

> An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

> *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

The director denied the petition on January 16, 2009, after waiting more than one month for submission of the required initial evidence, which, as noted above, was due within seven business days of the date of filing. While the regulations at 8 C.F.R. § 214.2(p)(13) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original P-3 petition, the instant petition was for new employment. Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. On appeal, the petitioner does not identify an erroneous conclusion of law or statement of fact on the part of the director. The petitioner does not acknowledge the reasons stated for denial of the petition, or provide evidence that the initial evidence was timely submitted. Accordingly, the appeal will be summarily dismissed.

Even assuming, *arguendo,* that the petitioner had timely submitted the documentation now provided on appeal, the AAO notes that the denial of the petition would have been within the scope of the director's discretionary

authority, pursuant to 8 C.F.R. § 103.2(b)(8)(ii). The evidence submitted does not include a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D).

Furthermore, although the petitioner has submitted evidence pertaining to the evidentiary requirements at 8 C.F.R. §§ 214.2(p)(6)(ii)(A) and (B), the evidence fails to indicate how the beneficiary's style of artistic expression, methodology, or medium is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons, such that it could be affirmatively determined that it is culturally unique. The petitioner has submitted numerous articles regarding the beneficiary from a variety of print sources, but none of the articles are accompanied by certified English translations. One of the two reference letters submitted is also written in French with no accompanying translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.