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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

D9

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 13 2010

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:

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 withdraw the decision of the director and remand the petition for a new decision.

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 entertainer coming to the United States to perform under a culturally unique program. The petitioner is an owner and operator of radio and television stations and the beneficiary is a musician. The petitioner seeks to employ the beneficiary as a musician for the television show "Los Angeles en Vivo," for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be coming to the United States as an entertainer or performer to participate in a cultural event which will further the understanding or development of his art form. In denying the petition, the director observed that "Los Angeles en Vivo" is a daily variety talk show established for entertainment purposes and is not a "cultural event." The director further noted that "the show is geared towards a demographic which would already be familiar with the beneficiary's art form," and thus the beneficiary's performance "would not be furthering the understanding of his art form."

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, counsel for the petitioner asserts that the director's reasoning is "highly presumptuous," emphasizing that "entertaining events and culturally unique events are not mutually exclusive." Counsel further argues that "it is a gross generalization to conclude that all Spanish language speakers share the same level and understanding of a particular cultural form that is originated from a particular part of Latin America." Counsel submits a brief in support of the appeal.

Upon review, the AAO agrees with counsel's assertions and will withdraw the director's decision dated March 25, 2009. However, upon review of the record of proceeding in its entirety, the AAO cannot find that all requirements for the requested classification have been met. Therefore, the AAO will remand the petition to the director for further action and entry of a new decision, pursuant to the discussion below.

I. The Law

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)(3) states, in pertinent part:

> *Competition, event or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, even or performance, and stopovers which are incidental and/or related to the activity. An athletic activity or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

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.

II. Discussion

The sole issue addressed by the director is whether the petitioner established that the beneficiary will 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. 8 C.F.R. § 214.2(p)(6)(i)(B). The regulations require the petitioner to submit evidence that all of the beneficiary's performances or presentations will be culturally unique events. 8 C.F.R. § 214.2(p)(6)(ii)(C).

The petitioner seeks to employ the beneficiary as an on-air musician for its television program "Los Angeles en Vivo." The petitioner describes the program as "a daily variety talk show for KRCA that is devoted specifically to issues and topics facing regional Mexican communities and is targeted towards a specific demographic in the Spanish-language market." The petitioner further stated in a letter dated March 11, 2009:

> With a focus on issues facing regional Mexican communities, this variety show features music and guests which are significant in the Mexican regional communities. One of the best examples of regional Mexican music is the Grupera style of music. In fact, one of the significant trends in the Mexican entertainment industry in the United States is the emergence of music programs on television solely dedicated to Mexican Regional and Grupera genres of music.

The petitioner further stated that the beneficiary would "strengthen the show by performing regularly as the on-air musician playing the Grupera style music that made him famous," as well as interviewing other Mexican *grupera* artists who appear as guests on the show, and following local musical festivals which feature *grupera* style artists. The petitioner stated that through his "musical performances and interviews with Grupera style artists on the show and at music festivals," the beneficiary "will be furthering the understanding of this style of Mexican regional music in the United States."

The director denied the petition on March 25, 2009, concluding that the petitioner did not establish that the beneficiary qualifies as a performer or entertainer under a culturally unique program. In denying the petition, the director stated:

> In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States to participate in a cultural event or events that will further the understanding or development of his or her art form. In this case, the record shows that "Los Angeles en Vivo" is a daily variety talk show established for entertainment purposes and is not a cultural event that will further the understanding or development of the beneficiary's

art form. Additionally, the petitioner has stated that the show is geared towards a demographic which would already be familiar with the beneficiary's art form. Therefore, the performance would not be furthering the understanding of his art form.

On appeal, counsel for the petitioner asserts that "[e]entertaining events and culturally unique events are not mutually exclusive." Counsel emphasizes that "the cultural uniqueness and cultural value of the art form the beneficiary will perform on the program is not disputed by the Service." Counsel states that "while the petitioner's event is not marketed specifically as a culturally unique programming, it is an event with cultural context and value."

Counsel further asserts "it is a gross generalization to conclude that all Spanish language speakers share the same level and understanding of a particular cultural form that is originated from a particular part of Latin America." Counsel notes that the Spanish language market in the United States is a diverse group of people from a wide range of countries and with diverse cultural backgrounds. Finally, counsel contends that there are forms of entrainment that have intrinsic cultural values, regardless of the venues or target audience, and that the beneficiary's form of entertainment is one such type.

Upon review, the AAO agrees, in part, with counsel's assertions. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances are culturally unique, the fact that such performances would take place on a television show "designed for entertainment purposes" is entirely irrelevant. Although the statute and regulations refer to a "commercial or noncommercial program that is culturally unique," the term "program" is not defined and no specific requirements are set forth for the petitioner to establish that such a program exists. Rather, the petitioner is required to submit evidence that "all of the performances or presentations will be culturally unique events." An event is defined as an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement, and can include an entire season of performances. 8 C.F.R. § 214.2(p)(3). In this case, the beneficiary's one-year contract with the petitioner can be considered the "entertainment event or engagement." The petitioner does not have to be a cultural organization or operate an overtly non-entertaining cultural program dedicated solely to the culturally unique art form.

Furthermore, the AAO agrees with the petitioner that it was presumptuous of the director to conclude that the audience of the petitioner's television program must be familiar with the beneficiary's musical style because the television channel is aimed at Mexicans living in Los Angeles. The program can presumably be viewed by any Los Angeles resident whose cable service provider carries the KRCA station. The fact that some of the viewers may be familiar with *grupera* music is irrelevant and there is no basis in the statute or regulations for USCIS to speculate about the cultural experiences of the intended audience for the beneficiary's performances.

Therefore, we conclude that the focus of the director's analysis was inappropriately based on the nature of the television program on which he would perform, and the director's presumptions about the intended audience of the program, rather than based on a determination as to whether all of the beneficiary's performances would be culturally unique events.

The petitioner states that the beneficiary, in addition to performing on the show "Los Angeles en Vivo" as a musician, will be interviewing celebrity guests. The statute requires that the beneficiary seek to enter the United States temporarily and *solely* to perform, teach, or coach as a culturally unique artist or entertainer. Section 101(a)(15)(P)(iii)(II) of the Act. Although the petitioner indicates that the beneficiary would interview other *grupera* musicians, it is unclear how conducting such interviews should be equated with performing, coaching or teaching a culturally unique art form. Absent further clarification regarding the beneficiary's intended role on the show as an interviewer, the AAO cannot conclude that all of the beneficiary's appearances on the show would be culturally unique events.[1]

Additionally, beyond the decision of the director, the remaining issue in this matter is whether the petitioner has met the evidentiary requirements for this visa classification as set forth at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Specifically, 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit 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.

To satisfy this requirement, the petitioner submitted a letter dated January 12, 2009 from [redacted] General Manager of [redacted] The petitioner describes Mr. [redacted] as "a leading member of the Mexican entertainment industry." According to the partial English translation submitted, the letter states:

> We extend ours with complete recommendation toward [the beneficiary] who we have know [*sic*] for already 5 years and who we know as a singer of Regional Mexicano music and conductor of T.V. [He] has toiled in important television channels as they are it [*sic*] "Rola" video and "Televisa."

Mr. [redacted] does not attest to the authenticity of the beneficiary's skills in performing *grupera* style music, nor does he establish his credentials as a recognized expert in this area or sufficiently establish the basis of his knowledge of the beneficiary's skill. Nor does the letter attest with any specificity to the cultural or traditional elements of the beneficiary's performance.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "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

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[1] An Internet search for the petitioner and beneficiary reveals that the beneficiary is currently the co-host of the show "En Vivo" which is aired by the petitioner's Estrella TV network. *See* http://www.facebook.com/pages/estrella-TV-Portland/228365035058 (accessed on August 12, 2010). USCIS records indicate that the beneficiary is also the beneficiary of an approved P-3S classification petition filed by the petitioner, which is valid through September 30, 2010. (WAC0923851787). P-3S classification is granted to essential support aliens, highly skilled essential personnel determined by the Director to be an integral part of the performance of a P-3 alien. 8 C.F.R. § 214.2(p)(3). The AAO notes that a host of a television program would not generally fall under the definition of a P-3 essential support alien. For this additional reason, the director may deem it necessary to seek further clarification regarding the beneficiary's intended duties.

alien's or group's skill." In the present case, the petitioner has not established the credentials of the purported expert, the basis for the expert's opinion, or any specifics about the beneficiary's skill at performing a unique or traditional art form.

As a matter of discretion, USCIS may accept expert opinion testimony.[2] However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Here, the sole letter submitted is entirely deficient and cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. The AAO will not give it any weight in this proceeding. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The record does not contain sufficient evidence that could, in the alternative, satisfy the requirement set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B), which requires the petitioner to submit documentation that the beneficiary's performances are culturally unique, in the form of reviews in newspapers, journals, or other published materials. The petitioner has submitted evidence such as advertisements for the beneficiary's live performances, copies of CDs recorded by the beneficiary, and photographs of the beneficiary's performances. While the petitioner has provided evidence of the beneficiary's recognition as a singer in Mexico, none of these documents establish that the beneficiary's performances are culturally unique. The record contains a partial translation of a single published interview with the beneficiary that identifies him as a "grupero" singer, but the article does not discuss the culturally unique nature of his performances. The petitioner has submitted general articles indicating that

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[2] Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); *see also id* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

grupera music is a recognized genre of regional Mexican music. However, the regulation requires documentation that is specific to the beneficiary and his individual performances of the claimed culturally unique art form.

The AAO cannot find that a single article merely identifying the beneficiary as a "grupero" is sufficient to meet this evidentiary requirement. The petition may not be approved as the petitioner has not submitted evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

At this time, the AAO takes no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determinations on those issues. So far, the director has not done so. By remanding this matter, the AAO does not necessarily find that the beneficiary is ineligible. Rather, we remand the matter because the director based the decision on incorrect grounds.

Therefore, the AAO will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.