

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

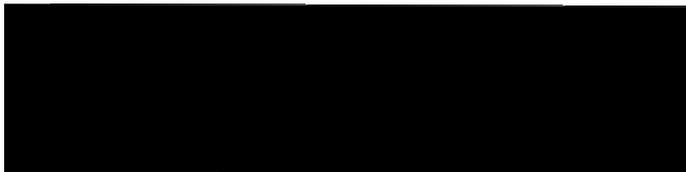
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D9



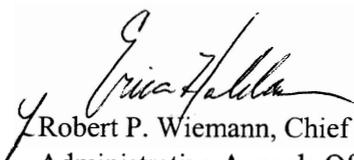
FILE: WAC 07 023 50953 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner: [Redacted]
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: 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 filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking to classify 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 a children's entertainer.

The director determined that the petitioner had failed to demonstrate that the beneficiary was a culturally unique entertainer that would perform under a culturally unique program in the United States. Specifically, the director found that although the evidence submitted indicated that the beneficiary was a versatile and talented performer, it did not show that the beneficiary's performances were culturally unique or that all of her performances would be culturally unique events.

On appeal, the petitioner submits additional evidence, and claims that the recent establishment of a television show starring the beneficiary would satisfy the requirements for the visa classification.

Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P), provides the terms under which an alien may seek classification as a P nonimmigrant provided the alien has a foreign residence which he or she has no intention of abandoning.

Section 101(a)(15)(P)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii), provides for classification of an alien 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)(6)(i) 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 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.

The issue in this matter is whether the petitioner established that the beneficiary's performance is culturally unique. The petitioner provided documentation, both with the initial petition and in response to the request for evidence, which established that the beneficiary provided a variety of entertainment services for children. For example, the record contains photographs of the beneficiary performing as Cinderella, Snow White, a pirate, and a magician, and further claims that the beneficiary provides other entertainment services such as puppetry, juggling scarves, and poi spinning. In a letter of support accompanying the petition, the petitioner stated that the beneficiary is a "highly skilled entertainer and performing arts teacher for children," and that the petitioner is thus able to book the beneficiary "at any family related event including many corporate events which require highly experienced entertainers."

In response to the director's request for evidence, issued on January 24, 2006, the petitioner submitted an article from the *Los Angeles Independent* dated January 11, 2007. The article, entitled "Her Cinderella Story," recounted the beneficiary's career path and explained how she left England to come to Hollywood. In addition, the applicant submitted additional photos of the beneficiary in her various costumes, and also submitted independent event sheets describing the date and place the beneficiary would perform, the type of services she would perform, and the fee the client would be charged. Finally, the petitioner claimed that the beneficiary was a repeat entertainer at the Idyllwild Arts Summer Program, and provided a printed catalog of courses and provided documentation that the beneficiary would teach and perform for the program.

The director determined that the evidence in the record was insufficient to establish that the beneficiary was a culturally unique entertainer performing in culturally unique programs, and denied the petition on May 17, 2007.

On appeal, the petitioner contends that the beneficiary will be performing in a culturally unique children's show entitled "The Children's English Friend," and therefore has satisfied the regulatory requirements.

Upon review, the AAO concurs with the director.

As stated above, the term "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. In this matter, the petitioner's claim that the beneficiary's entertainment of children in various roles constitutes cultural uniqueness is unsupported. As set forth by the regulations, the petitioner must submit either affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's skills in performing, the unique or traditional art form, or documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials. In this matter, the petitioner has failed to submit affidavits, testimonials, or letters from recognized experts as required under 8 C.F.R. § 214.2(p)(6)(ii)(A). Moreover, despite submitting a significant amount of published material, such as advertisements for various festivals or programs in which the beneficiary has participated, none of these printed materials attest to the cultural uniqueness of the beneficiary's performances, as required in the alternative by 8 C.F.R. § 214.2(p)(6)(ii)(B). There is no question that the applicant is undoubtedly gifted in entertaining children by various means. However, the record fails to demonstrate that her skills and her performances are culturally unique in comparison to other children's entertainers. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner now contends that the beneficiary will be performing on a television show entitled "The Children's English Friend." According to the documentation submitted, the show will appear on public television and will attempt to educate children on English cultural life during the Victorian Era. While on its face, this performance may appear culturally unique in that it pertains specifically to the Great Britain and English culture, there are two major flaws. First, this television show was not a proposed performance or included on the beneficiary's itinerary when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Second, despite the documentation pertaining to the new television show, which includes a script and access guidelines from Time Warner, the petitioner has still failed to submit sufficient evidence to establish that the beneficiary's performance would be culturally unique. As discussed above, the record contains no affidavits, testimonials, or letters from recognized experts as required under 8 C.F.R. § 214.2(p)(6)(ii)(A), or published materials attesting to the cultural uniqueness of the beneficiary or her performances, as required in the alternative by 8 C.F.R. § 214.2(p)(6)(ii)(B).

In the absence of corroborating evidence such as published materials or critical reviews of the beneficiary's past and prospective performances describing the cultural uniqueness of the beneficiaries' performance, the record is insufficient to establish that the beneficiaries qualify for P-3 classification.

The evidence contained in the record is insufficient to establish that the beneficiary has been performing as a culturally unique entertainer in culturally unique programs in the past and that the beneficiary will prospectively perform in culturally unique programs. Accordingly, the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) provides that where the agent for the beneficiary is the petitioner, the petition is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

In the letter dated July 12, 2007, submitted in support of the appeal, the petitioner claims that the beneficiary is her employee. However, the petitioner failed to provide the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary. The petitioner, therefore, failed to comply with the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E). Since the appeal will be dismissed for the reason stated above, this issue will not be discussed further.

Finally, the regulation at 8 C.F.R. § 214.2(p)(7)(v) states in pertinent part that a consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs. The record does not contain the required consultation. For this additional reason, the petition may not be approved.

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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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. § 1362. Here, that burden has not been met.

ORDER: The appeal is dismissed.