

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

D8.



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 04 2010**

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:

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.

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 sustain the appeal and approve the petition.

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 artists coming to the United States to perform under a culturally unique program. The petitioner states that it operates a school of Indian classical music and dance. It seeks to employ the beneficiaries, who are classical Indian musicians, as musical accompanists, performers and instructors for a period of one year. The petitioner has filed four previous P-3 petitions on behalf of the beneficiaries since 2006, all of which were approved.

The director denied the petition, concluding that the petitioner failed to establish that it will be the beneficiaries' only employer in the United States and failed to establish that it is qualified to file a petition as the beneficiaries' agent.

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 it has submitted evidence to establish that it will be the beneficiary's only employer for the period of employment and events listed in the itinerary. The petitioner submits a statement and additional documentary evidence in support of the appeal.

Upon review of the totality of the evidence, the AAO finds the petitioner's assertions persuasive. Accordingly, we will withdraw the director's decision and approve the petition.

## **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.

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.

Finally, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act

on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (I) 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.
- (II) A person or company in the 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 of 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.

## II. The petitioner's role as U.S. employer or agent

The sole issue addressed by the director is whether the petitioner established that it is a qualifying United States employer or agent. The petitioner stated on Form I-129 that it intends to compensate each beneficiary at a rate of \$100 per week for ten hours of work.

Where asked to explain the nature of the proposed event, the petitioner stated that the beneficiaries will:

Perform workshops, recitals and hold training classes. Dance drama performances of Nupur Dance Academy in October and November 2009 [*sic*]. Instrumental and vocal accompaniment with dance. Travel back and forth from India to USA (if needed).

The petitioner further described the beneficiaries' proposed duties on the Form I-129 as follows:

Perform Vocal (Hard Classical) Recitals. Accompany live in dance classes at Nupur Dance Academy. Teach classes and accompany dancers via vocal and instrumental accompaniment. Travel within the US as needed.

In a letter dated January 2, 2010, the petitioner further discussed the beneficiaries' proposed activities as follows:

Nupur Dance Academy has two major dance performances in September and October of this year. We are starting to have graduations (Arpana's) of our students in the 1<sup>st</sup> half of the year. These are performances in large venues. All artists (4 all together) in the petitions mentioned

above will be needed for vocal and instrumental support. The . . . artists from India and the Nupur Dance Academy Troupe will go to other cities in the United States to perform.

The petitioner submitted a contract summarizing the terms of its oral agreement with the beneficiaries, which states:

- 1) Travel to USA on their budget
- 2) Performance within United States – No involvement of Nupur Dance Academy. Proceeds go directly to [the beneficiaries] only. No commissions to Nupur Dance Academy.
- 3) Free room and board in Torrance, CA.
- 4) For Dance accompaniment and workshops in Torrance, CA – Compensation at the rate of \$100.00/week for 10 hours a week work. . . .
- 5) Transportation within greater Los Angeles area provided by Nupur Dance Academy
- 6) International and domestic Telephone services provided by Nupur Dance Academy while in the greater Los Angeles area.
- 7) Health and insurance expenses if incurred deducted from salary. . . .

The petitioner submitted an itinerary for the beneficiaries which included the following events, workshops and performances:

July 12 to August 2, 2010	Workshop on Ghazals, Vocal Classical Music and Santoor, Torrance CA
August 9 to September 17, 2010	Various performances and work with other teachers in Los Angeles, CA
August 21, 2010	Arpana – Ayuja Dixit, Redondo Beach Center of Performing Arts
September 25 to October 8, 2010	Practice and Dance Drama Performance on 10/9/2010, Performing Arts Center, Long Beach, CA
October 18-24, 2010	Workshop on Tabla, Torrance, CA
November 1-20, 2010	Practice and Dance Drama Performance on 11/20/2009, Performing Arts Center, Bel Air, CA
November 29 to December 18	Their own programs (Texas, Pennsylvania, New York, New Jersey, North Carolina, South Carolina)
December 27 to March 1, 2011	Back to India
March 4 to May 22, 2011	Various Nupur Dance Academy Programs and NDA Student Arpanas - Torrance, Los Angeles, Massachusetts, Indiana, Michigan and Illinois.

The director issued a request for additional evidence ("RFE") on January 20, 2010. The director instructed the petitioner to: (1) explain what the petitioner's relationship with the beneficiaries will be (sole employer agent or employer and agent); (2) provide a detailed explanation of the nature of all events or activities; (3) Provide a copy of the petitioner's contractual agreement with the beneficiaries explaining the wage offered and other specific terms and conditions of employment; (4) provide contractual agreements between the beneficiaries and each of the employers for each event; and (5) provide a complete itinerary of the events.

In a response dated February 27, 2010, the petitioner stated:

Nothing has changed from previous year(s) petitions. We are still the employer of these unique performers, however, per our contract terms of agreement they are allowed to perform for other organizations without our financial involvement, although we act [as] their agents.

With respect to the itinerary of events, the petitioner stated that it was submitted a modified itinerary, as some events were awaiting finalization at the time the petition was filed. The petitioner further indicated:

- [The beneficiaries] will teach classes on vocal and instruments (Santoor and Tabla) [redacted]; at the NDA Studio in Torrance, CA (owned [redacted]; at [redacted] (not owned by [redacted] and [redacted] (not owned [redacted]. The will be offered \$100.00 a week each. For [redacted] theater and stage performances they will be offered \$1000.00 each.
- For their performances in Macungie, PA they will be offered \$200.00 for practice and \$1000.00 for the actual performance in November by Hindustani Music Academy.

The petitioner noted that it serves as an agent for any "exterior performances," and assists in decision-making regarding when and where the beneficiaries are able to perform.

The revised itinerary specifies that the only "exterior performance" to be undertaken by the beneficiaries would be from November 1 to November 27, 2010, which includes rehearsals and two performances in Macungie, Pennsylvania for the Hindustani Music Academy. The petitioner submitted a flyer advertising this event, as well as a copy of the beneficiaries' contract with Hindustani Music Academy. All other events listed on the itinerary appear to involve teaching workshops for the petitioner, rehearsals with the petitioner's students for major performances, and performances in and around Torrance, California on behalf of the petitioner's school. The petitioner submitted available advertisements for workshops and performances, including an advertisement indicating that the petitioner offers its workshops at the premises of NDM Bollywood Dance Productions and Studios, Inc. in Artesia, California.

The director denied the petition on March 15, 2010, concluding that the petitioner failed to establish that it is the beneficiaries' sole employer or that it has, alternatively, fulfilled the requirements to act as an agent for the beneficiaries. Specifically, the director noted that the petitioner "has not submitted an itinerary of definite employment, and it has not submitted contracts between all of the actual employers and the beneficiaries for all events and performances."

On appeal, the petitioner asserts that it will serve as the beneficiaries' employer in the United States for the requested period of employment. The petitioner submits additional evidence to clarify that it rents studio space at two other dance studios in Southern California to offer its own music and dance studios and that the beneficiaries will not actually be employed by these studios. The petitioner emphasizes that it provided a contract between the beneficiaries and Hindustani Music Academy, and that the beneficiaries will have no other employment other than what is specified on the itinerary provided in response to the RFE.

The petitioner further asserts that, with the exception of the beneficiaries' performance for Hindustani Music Academy, all events listed on the itinerary are conducted by the petitioner's Indian music and dance school. The

petitioner asserts that "it is an oral contractual understanding between [the beneficiaries] and [the petitioner] that these artists are not allowed to work anywhere without the explicit permission of [the petitioner] and in events not mentioned in the itinerary provided to your office."

Upon review, the AAO concurs with the petitioner that the evidence submitted establishes that the petitioner will serve as the beneficiaries' employer. The summary of the terms of the beneficiary's agreement with the petitioner and the more complete itinerary indicate that the beneficiaries will be paid by the petitioner for teaching workshops and participating in performances with the petitioner. While such activities will take place at multiple locations, including the petitioner's dance studios, other dance studios rented by the petitioner, and in performing arts centers, the AAO is satisfied that all such activities are conducted for the benefit of the petitioner. It appears that the director observed the multiple locations listed in the itinerary and concluded that there would be additional employers. However, the director did not determine that the petitioner would not employ the beneficiaries in any capacity, nor did the director cite any other objections to the approval of the petition. As such, the director's refusal to grant the beneficiaries' P-3 classification for any length of time was unwarranted.

The remaining question is whether the beneficiaries' performance scheduled for November 2010 in Pennsylvania may be authorized. The petitioner states that it is acting as the beneficiaries' agent for the purposes of one performance for the Hindustani Music Academy. Applying the regulations at 8 C.F.R. § 214.2(p)(2)(iv)(E)(2), the petitioner is required to submit an itinerary which 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, and a contract between the employer(s) and the beneficiary or beneficiaries. The burden is on the agent to explain the terms and conditions of the employment. The petitioner has complied with these requirements with respect to the beneficiaries' performance for the Hindustani Music Academy. As all other events and performances scheduled are for the petitioning organization, and as there are no additional grounds for denial of the petition, the petition will be approved for the period of time requested by the petitioner.

### **III. Conclusion**

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 been met. Accordingly, the AAO will withdraw the director's decision and approve the petition.

**ORDER:** The appeal is sustained.