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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 210 50365 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2006

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: 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director 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 an extension of the validity of the petition classifying 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 in a culturally unique program. The petitioner is a Russian language broadcasting company, seeking to continue to employ the beneficiary as director of Russian programming for one more year.

The beneficiary is a 56-year old native of the former Soviet Union and citizen of Russia. He last entered the United States in B-1 nonimmigrant classification on February 2, 1998.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary seeks to enter the United States solely to perform as a culturally unique entertainer in a culturally unique program. The director determined that the beneficiary would not be performing, teaching or coaching; therefore, was ineligible for the benefit sought. The director further found that the petitioner had not provided Citizenship and Immigration Services (CIS) with an adequate consultation.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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)(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 addressed in this proceeding is whether that the beneficiary is coming to the United States to perform, teach or coach *as a culturally unique artist 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.

In this case, the petitioner indicated on the Form I-129 petition that the beneficiary would direct plays. According to the summary of the oral contract, the beneficiary agreed to provide services as an actor/director/producer of television shows and plays. The petitioner stated that the "plays are modern interpretations of Russian classics."

Finding the initial evidence insufficient to establish eligibility, on April 9, 2004, the director requested, among other things, that the petitioner provide:

- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities and copy of any itinerary for the events or activities.
- Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's skills in performing, presenting, coaching, or teaching the unique or traditional art form.
- Documentation showing that the alien's performance is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.
- Evidence that all of the performances or presentations will be culturally unique events.

In response to the director's request, the petitioner submitted a letter written by the petitioner's counsel, stating that the beneficiary is a director of Russian language television programming and all of the performances and shows that he will direct will be in the Russian language and therefore are culturally unique. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of*

Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also submitted translated excerpts of newspaper articles about the beneficiary. Because the petitioner failed to submit full English 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). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The fact that the proposed programs would be in Russian does not necessarily mean that *all* of the proposed events would be culturally unique events anymore than all programs in English are culturally unique to England or the United States. The petitioner has not established that the content of the beneficiary's performances and productions would be culturally unique. The petitioner asserts that all of the events have been and will be culturally unique. 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, counsel for the petitioner asserts that the petitioner's programming specifically focuses on Russian culture. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The second issue to be addressed 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, as required by the Act. The director determined "as a director and producer, the beneficiary is not performing, teaching or coaching as an artist for a specific event."

Section 101(a)(15)(P)(iii)(II) of the Act, provides for classification of an alien who: "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 corresponding regulation is more expansive.

The regulation at 8 C.F.R. § 214.2(p)(6)(i)(A) provides:

> 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.

Initially, the petitioner indicated on the Form I-129 that the beneficiary was coming to the United States to direct and produce plays. The petitioner stated that at the time of filing the instant petition, the beneficiary was responsible for directing weekly stage performances to be taped and later broadcast on the petitioner's television station.

The director determined that the petitioner failed to establish that the beneficiary would be performing, teaching or coaching as an artist for a specific event; therefore, he was ineligible for P-3 classification. This portion of the director's decision shall be withdrawn. In response to the director's request for additional evidence, the petitioner wrote that the beneficiary is "an exceptional Actor/Director." On appeal, the petitioner asserts that the beneficiary is a Russian director and actor. In review, the beneficiary would be developing and interpreting his art form even if his repertoire would be limited to that of a producer/director.

The next issue to be addressed in this proceeding is whether the petitioner satisfied the requirement of submitting a consultation to Citizenship and Immigration Services (CIS). 8 C.F.R. § 214.2(p)(6)(v) states, in pertinent part,

> *Consultation requirements for P-3 in a culturally unique program.* Consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs. If the advisory opinion is favorable to the alien, it should evaluate the cultural uniqueness of the alien's skills, state whether the events are cultural in nature, and state whether the event or activity is appropriate for P-3 classification.

The petitioner submitted a consultation dated June 30, 2004, from the Actors' Equity Association, an entity appropriate for performers and stage managers in live format presentation, that provides:

> This is to advise you that the Actors' Equity Association has been consulted with regard to the appearance of [the beneficiary] in the United States, under the auspices of Info Press, Inc., from 7/13/04 to 7/13/05, on a P-3 visa.
>
> Actors' Equity has no objection to the appearance of this artist and recognizes that his work is indigenous to Russia and is, in fact, culturally unique. His performance will be in Russian and does not, in our opinion, detract from the American labor force.
>
> Accordingly, Actors' Equity recommends the approval of the visa submitted on behalf of this artist.

In review, the consultation is insufficient because it fails to state whether the proposed events are cultural in nature, and whether the event or activity is appropriate for P-3 classification. The petitioner has failed to overcome this basis for denial of the petition.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported 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 petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.