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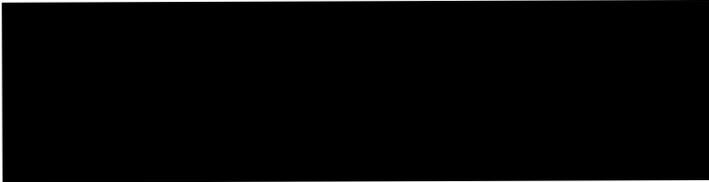
**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE: WAC 09 800 01866 Office: CALIFORNIA SERVICE CENTER Date:

**JAN 20 2010**

IN RE: Petitioner:  
Beneficiaries:



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:



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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 director's decision 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 an artist or entertainer coming to the United States to perform under a culturally unique program. The petitioner, a non-profit organization, is a Ukrainian folk dance ensemble and the beneficiary is a [REDACTED] player. The petitioner seeks to extend the beneficiary's P-3 status for one additional year and indicated on the Form I-129 that the petition involves a "continuation of previously approved employment without change."

The director denied the petition on February 2, 2009, concluding that the petitioner did not establish the beneficiary's eligibility for classification as a P-3 artist or entertainer. In denying the petition, the director emphasized that the petitioner failed to submit any of the required initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system.

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 submits a letter in support of the petition, an itinerary, a labor consultation, additional information regarding the petitioner and its performances, and evidence of the beneficiary's qualifications.

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)(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)(13) provides, in pertinent part:

The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director.

As noted above, the petition to extend the beneficiary's petition was denied based on the petitioner's failure to submit documentary evidence outlined by the regulations pertaining to P-3 nonimmigrants. *See* 8 C.F.R. §§ 214.2(p)(2)(ii) and 214.2(p)(6)(ii).

Counsel filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on November 24, 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. . . .

Relying on these regulatory provisions, the director denied the petition based on the petitioner's failure to submit supporting evidence.

However, this matter involved a continuation of previously approved employment without change, involving the same petitioner and beneficiary. The applicable 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, provided that the beneficiary will continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director.

Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was improper. Under the circumstances present in this case, the petitioner was not required to submit supporting documents unless instructed to do so by the director. Accordingly, the director's decision will be withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO finds the evidence submitted on appeal sufficient to establish the beneficiary's ongoing eligibility for P-3 classification. The beneficiary will continue to perform the *tsymbaly* (dulcimer) as a musical accompanist to the petitioner's Ukrainian dance ensemble. According to the evidence submitted on appeal, the petitioner's ensemble "draws from a repertoire of over 45 traditional dances representing the various regions of Ukraine," and is dedicated to imparting "an appreciation of Ukrainian dance, traditions, and culture." The beneficiary will be required to play traditional Ukrainian folk dance music and solo musical interludes at Ukrainian festivals, concert series, and arts programs. The evidence establishes that the beneficiary is an accomplished *tsymbaly* player whose area of specialization is Ukrainian folk music, and that the *tsymbaly* is a traditional Ukrainian folk instrument.

Upon review, the petitioner has established that the beneficiary will continue to perform as a culturally unique artist in a culturally unique program under the extended petition. Accordingly, the petition will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.