



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-AE-

DATE: JUNE 27, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business engaged in promoting musical productions, seeks to classify the Beneficiaries as performing artists in a culturally unique program. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). The P-3 classification makes visas available to foreign nationals who perform, teach, or coach as artists or entertainers, individually or as part of a group, under a culturally unique program.

The Director of the California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish, as required, that the Beneficiaries possess culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and that all of the Beneficiaries' performances or presentations in the United States would be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

On appeal, the Petitioner maintains that the record establishes the authenticity of the Beneficiaries' culturally unique skills and that all of their activities on behalf of the Petitioner will be culturally unique. It provides new evidence, and documentation previously submitted into the record.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(P)(iii) of the Act provides for classification of a foreign national having a foreign residence which the foreign national has no intention of abandoning who performs individually or as a group and seeks to enter the United States temporarily solely to participate in a program that is culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) expands on the statute as follows:

- (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)(3) provides, in pertinent part:

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)(ii) also 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, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.*

II. ANALYSIS

A. Introduction

The Petitioner promotes musical productions and seeks to hire the Beneficiaries, a group of comedians and Afropop musicians touring together as [redacted] to perform at clubs. The Petitioner's initial submission included a letter dated July 17, 2018, explaining that the Beneficiaries include singers [redacted], duo [redacted] and [redacted] [redacted], [redacted], and comedians [redacted] [redacted] and [redacted], among other artists. The Petitioner also provided a letter dated July 23, 2018, in which it characterized the group's music as being "a fusion of highlife, hip-hop and Afropop which is culturally unique to the Eastern and Western part of Nigeria." Regarding the group's comedians, the letter described their comedy as "highly essential to the Nigeria[n] culture . . . rendered in a manner indigenous and reflective of the diverse history, culture and heritage of the Nigerian people." The Petitioner submitted a concert performance agreement

signed by the Petitioner and singer [redacted] on behalf of the Beneficiary group.¹

At issue are whether the Petitioner included the requisite evidence demonstrating that the Beneficiaries' performances are culturally unique and whether it established that all of the performances or presentations will be culturally unique events. For the reasons discussed below, the Petitioner has not met these requirements.

B. Artist or Entertainer in Culturally Unique Program

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the Petitioner show that the Beneficiaries' performance or art form is culturally unique either through the submission of affidavits, testimonials, and letters, or through published reviews of the Beneficiaries' work or other published materials. Regardless of which form of evidence is offered, it must establish that the Beneficiaries' group presents, performs, teaches, or coaches 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.

1. Affidavits, Testimonials, or Letters from Recognized Experts

The Petitioner relies on *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 805 (AAO 2012) (holding that the weight and quality of the evidence confirms whether or not the artistic expression is "culturally unique.") In that case, we found sufficient scholars' letters explaining in detail how Klezmer music in general is the music of an ethnic group of people, and how the Argentine version, which combines Eastern European roots with native Argentine culture, produces a unique Jewish Argentine music. *Id.* at 802-03. The letters in that case discussed the beneficiaries' band specifically and how the band itself was culturally unique. While the group in that matter fused different elements, their music was "first and foremost, Jewish klezmer music." *Id.* at 805. The decision further noted that there existed "a musical movement in Argentina that fuses Argentine styles with influences from Jewish music and other Eastern European styles." *Id.* at 806.

While the Petitioner has submitted two letters, it has not demonstrated that the authors are recognized experts who have clarified how the Beneficiaries' performances are culturally unique. Within its initial submission, the Petitioner provided an undated letter from [redacted] CEO of an entertainment management company in Atlanta, who briefly discusses the musical performance styles of Beneficiaries [redacted] [redacted] calls Beneficiary [redacted] "the most energetic Afrobeat/Afropop performer . . . to ever emerge from Africa," and emphasizes that he performs in [redacted] English, and Pidgin English. He refers to Beneficiary [redacted] as an "extremely gifted, creative and multi-talented recording artiste" who promotes "the cultural scenery, social injustice and values" of [redacted] Nigeria, in songs performed mostly in the [redacted] dialect and Pidgin English. He describes Beneficiary [redacted]'s newest projects [redacted] and [redacted] as "culturally fused music" that speaks of "the strength and glory of the people of [redacted]." Much of the remaining

¹ We note that there is inconsistency regarding the requested validity period, as the petition and the itinerary indicate the dates of intended employment are from October 1, 2018 to October 1, 2019, while the contract states "[t]he duration of this agreement shall be for a period of two (2) years."

text of [redacted]'s letter detailing the musical careers of those Beneficiaries appears to have been copied from Wikipedia articles about them that the Petitioner provided in its initial submission.

Within its response to the Director's request for evidence, the Petitioner submitted a letter from [redacted] adjunct professor of African History and the African Diaspora at the University of [redacted]. His CV indicates that his background is in African and Nigerian history, political science and economics. He states that "[t]he impressive thing about the [Beneficiary] group is the infusion and mix of old traditional beats, Afro Beat, High life, and love genre to create a distinctive musical tunes." [redacted] calls the group's music "unique in rhythm, lyrics, and melody," but he does not suggest that the group's performances are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

In addition, while [redacted] and [redacted] discussed their own credentials, the Petitioner did not submit evidence to establish that [redacted] a music promoter, and [redacted] a history professor, are "recognized experts" in the Beneficiaries' field of the performing arts, as required by the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

Further, we acknowledge that the Petitioner provided a "no objection" labor consultation letter from [redacted] of the American Guild of Musical Artists (AGMA). [redacted] states that the supporting documentation "establishes that [the Beneficiary group] presents a unique performance representative of the cultural heritage and musical tradition of Nigeria" and that they "appear to meet the standards of distinction set forth at 8 C.F.R. [§] 214.2[(p)]." While the letter satisfies the Petitioner's burden to supply a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). See 8 C.F.R. § 214.2(p)(7)(i)(D). Regardless, the letter does not constitute a letter from an expert in Nigerian culture attesting to the authenticity of the Beneficiaries' skills in performing a unique or traditional art form. [redacted] also does not explain how AGMA reached its conclusion based on the evidence submitted with the petition.

On appeal, the Petitioner provides a letter from [redacted] the president of the [redacted] of Nigeria, describing the Beneficiaries' performances as "a unique blend of traditional, ethnic and cultural Nigeria[n] music with contemporary foreign music." [redacted] asserts that the Beneficiaries "promote the Nigerian culture with their genre of music" and further the "understanding and development of AfroPop, highlife and rap music." While the Beneficiary group may have a unique sound, [redacted] does not explain how the group's performance is culturally unique to Nigeria.

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 alien's or group's skill." As a matter of discretion, USCIS may accept expert opinion testimony.² USCIS is ultimately responsible for making the final determination regarding a foreign

² 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

national's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988); 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.’”); see also *Skirball Cultural Center*, 25 I&N Dec. at 805 (holding that the petitioner bears the burden of establishing by a preponderance of the evidence that the beneficiaries’ artistic expression, while drawing from diverse influences, is unique to an identifiable group of persons with a distinct culture.”)

Ultimately, the letters submitted characterize Beneficiaries [redacted] and [redacted] as performers who enjoy followings in Nigeria and elsewhere, and the Beneficiary group as employing lyrics in [redacted] [redacted], and Pidgin English. Although the letters generally suggest that there are cultural elements to the Beneficiaries’ performance, the authors have not established their credentials as recognized experts in this area and do not sufficiently detail how Beneficiaries’ performances are culturally unique to Nigeria, as claimed. The evidence, therefore, supports the Director’s determination that the testimonial evidence does not satisfy the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. Documentation that the Performance is Culturally Unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) allows the Petitioner to offer documentation that the Beneficiaries’ performance is culturally unique, as exemplified by reviews in newspapers, journals, or other published materials. We agree with the Director that the Petitioner has not submitted reviews or other published materials documenting that the Beneficiaries’ performance is culturally unique.

Several of the articles submitted do not mention the Beneficiaries, but generally discuss comedy and popular music in Nigerian. The Petitioner submitted a portion of an article titled “Using Comedy to Strengthen Nigeria’s Democracy” from the website www.newyorker.com that discusses Nigerian political satire and states that Nigerian stand-up comedy is rooted in traditional Nigerian theatre and storytelling. The article “African Popular Culture and the Path of Consciousness: Hip Hop and the Culture of Resistance in Nigeria” from the journal *Postcolonial Text* mentions several Nigerian hip-hop artists whose work is of a political nature. The article “Keep the Home Fires Burning” from *The Guardian* examines the rise of Nigerian pop music. The article “Is This the Year that African Music Will Conquer the United States” from the Washington Post discusses the rising popularity of Afrobeats music, which it describes as “a fidgety musical hybrid mashing Afro-pop, Caribbean soca and American hip-hop.” Additional articles from Wikipedia characterize Afrobeat music as “a combination of traditional [redacted] music, jazz, highlife, funk, and chanted vocals, fused with percussion and vocal styles, popularised in Africa in the 1970s,” and Afropop music as building on “cross-pollination with western popular music.” Further articles discuss World and Highlife music. However, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary or group and their individual performance of the claimed culturally unique art form. The above-referenced articles do not satisfy the regulation, as they do not mention the performance of the Beneficiaries.

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).

The Petitioner submitted additional articles that mention some of the Beneficiaries but do not discuss how their performances are culturally unique. An outline titled [redacted] [redacted] quotes a portion of a stand-up comedy routine performed by Beneficiary [redacted] in Pidgin English. Several articles from Wikipedia and the website www.theguardian.com mention that Beneficiary [redacted]'s 2011 song [redacted] achieved success in Nigeria and greater recognition for Afrobeats music in the United Kingdom, and credit him with combining western influences and African culture to produce a unique sound. The Wikipedia article about [redacted] describes his musical style as being "heavily influenced by the sounds and culture of his people." An article titled "[redacted]" from the website www.thenationonlineng.net discusses the duo's challenges and successes. A biography of Beneficiary [redacted] published on the website www.nairaland.com calls him "an indigenous rapper who delivers his raps in [the [redacted] language and a little bit of Pidgin English." He is also briefly mentioned in a Wikipedia article about [redacted] rap, described as a style of Nigerian hip hop music that "draws its main influences from [redacted] traditional music and African American music." An article titled [redacted] from [redacted]'s webpage [redacted] provides his own description of himself as "having represented the Stand-up Comedy genre as one of Nigeria and Africa's leading exports." The above-referenced articles, however, do not offer specific details as to how the Beneficiaries' performances are culturally unique.

Further, several of the articles mention awards won by the Beneficiaries. Publicity releases regarding Beneficiary [redacted] note that he won the award for "Best Indigenous Artist of the Year" at the 2011 [redacted] Awards. A Wikipedia article and a press release from the website www.cnn.com mention that [redacted] won "Best African Act" at the 2007 [redacted] Awards, "Artist of the Year" at the 2009 [redacted] Awards, "Best International Act: Africa" at the 2011 [redacted] Awards, "Best-Selling African Artist" at the 2014 [redacted] Awards, and the "Evolution Award" at the 2015 [redacted] Awards. A Wikipedia article about [redacted] mentions that he won "Best Stand-up Comedian of the Year" at the 2005 and 2006 [redacted] Awards. A Wikipedia article about [redacted] indicates the group won "Artiste of the Year" at the 2012 [redacted] Awards and received an honorary award from the City of [redacted] in 2012. A Wikipedia article regarding [redacted] states that he received the "Best Comedian Award" at the 2009 [redacted] Awards. While the awards received by those Beneficiaries are relevant to their recognition, they do not demonstrate how their performances are culturally unique.

Unlike the published material in *Skirball Cultural Center*, 25 I&N Dec. at 803-04, the items in the matter before us do not specify how the skills the Beneficiaries will perform in the United States are culturally unique to Nigeria or another qualifying group. Nothing in *Skirball Cultural Center* suggests that performing music in a foreign language is sufficient to establish that a performance is culturally unique. While the Beneficiary group may have a unique sound, the published materials do not sufficiently corroborate that their performances are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons. In sum, the appeal will be dismissed, as the Petitioner has not fulfilled the requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

3. Evidence that the Performances or Presentations will be Culturally Unique Events

The Petitioner's initial filing included promotional flyers for the Beneficiaries' 12 upcoming performances at music clubs, dance clubs, bars, and banquet halls. While a culturally unique group could perform at these venues, as previously discussed, the Petitioner did not demonstrate that the Beneficiaries' performances are culturally unique. *See* 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Absent evidence that the Beneficiaries' performances are culturally unique to "a society, class, ethnicity, religion, tribe, or other group of persons," the Petitioner cannot establish that performances of [redacted] will be "culturally unique" events. Based on the foregoing, the Petitioner has not established that all of the Beneficiaries' performances or presentations in the United States will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

III. CONCLUSION

The Petitioner has not established that the performances of the Beneficiary group are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons or that the events where they will perform will be culturally unique. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Skirball Cultural Center*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-AE-*, ID# 3407538 (AAO June 27, 2019)