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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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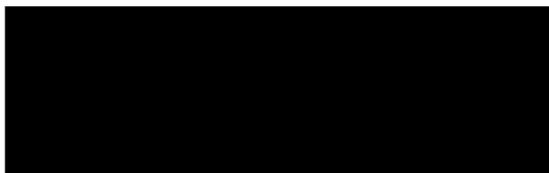
DATE: **APR 05 2011** Office: VERMONT SERVICE CENTER FILE: EAC 10 220 50509

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this 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 entertainer coming to the United States to perform under a culturally unique program. The petitioner owns and operates Spanish-language radio and television stations throughout the United States. It seeks to employ the beneficiary as a radio disc jockey and on-air personality at one of its Houston, Texas-based radio stations for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is a culturally unique performer. The director observed that, while the beneficiary may possess knowledge of Mexican Norteño music based on his experience as a radio disc jockey in Mexico, he is not a performer of such music, and does not appear to have any culturally unique skills as a performer.

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, counsel for the petitioner asserts that the director erred in determining that the beneficiary is not a performing artist. Counsel emphasizes that the beneficiary's radio programming "is known for call-ins from audiences to discuss various issues related to the music genre in general to lifestyle and social issues." Counsel asserts that the beneficiary "is also known for characters that he created who discuss music, social issues and other topics of interest to the target audience," and, as such requires a deep understanding of the cultural background of that audience. Counsel contends that the beneficiary's radio programs have a "clear and over the top cultural overtone."

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)(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.

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 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.

II. Discussion

The petitioner filed the nonimmigrant petition on August 16, 2010. In a letter dated July 27, 2010, the petitioner provided a detailed description of its organization's activities. The petitioner states that it owns one of the major Spanish-language television networks in the United States, and owns and operates 21 Spanish-language radio stations and nine Spanish-language television stations in the Los Angeles, San Diego, San Bernardino, Dallas, Houston, New York, Phoenix and Salt Lake City markets.

The petitioner indicates that the beneficiary will work as a disc jockey/radio personality for a Houston, Texas radio station for 25 hours per week. The petitioner did not identify the specific radio station on which the beneficiary would appear.

The petitioner described the beneficiary as a "highly sought after radio personality" who started his career in the Mexican radio industry in 1998. The petitioner described the beneficiary's qualifications as follows:

Based on his highly successful run as the DJ and on air personality with La Comadre 101.1 fm, [the beneficiary] was offered to host the radio program, "No Te Duermas" for Grupo Radiorama. Grupo Radiorama is the largest radio network group in the country of Mexico with a presence in 26 states and in the federal district. As the DJ and on air personality of "No Te Duermas", [the beneficiary] has been the leading force behind the success of the program with his unique style of Mexican humor that has become his signature style in his professional career. As a result of

[the beneficiary's] contributions as the DJ and on air personality, "No Te Duermas" has been rated the No. 1 radio program.

In particular, [the beneficiary] is well-known for his intimate understanding and knowledge with respect to Norteño music. Evolved from a form of Polka brought by European immigrants, Norteño music is unique to Mexico's northern region, which has gained considerable popularity during the past decade in the United States. Norteño lyrics are often loaded with cultural cues that are unique and distinct to the life experience and tradition in the region. Similar to Country Music fans in the United States, Norteño music aficionados embrace not only its unique rhythm and singing style, but also the lifestyle and tradition that the music represents.

As a result of his high profile professional career as one of the most successful radio personalities, [the beneficiary] is often invited to cultural events and other large high profile public events by companies and governmental agencies.

The petitioner described the beneficiary as "one of the leading expert[s] in Norteño music."

In response to a request for evidence issued on August 26, 2010, counsel for the petitioner further expanded on the beneficiary's cultural ties with Norteño music:

What distinguishes Norteno music from other music styles emerging out of Mexico is not only its sound but also the lyrics. Norteno lyrics are often loaded with cultural cues that are unique and distinct to the life experience and tradition in the region. In this way, the lyrics cover topics which are culturally significant to the northern part of Mexico such as: the ranch lifestyle and how it is impacted by modernization as well as current events.

Similar to the Country Music fans in the United States, Norteño music aficionados embrace not only its unique rhythm and singing style, but also the lifestyle and tradition that the music represents. It is for this reason, that the beneficiary has developed a strong following. As a DJ in this music genre, [the beneficiary] has followed the lifestyle and tradition of the music genre to create a unique style of performance art as a disc jockey. This is only possible because of [the beneficiary's] deep understanding of this style of Mexican music.

Just as [REDACTED] or [REDACTED] have their own performance styles to appeal to a certain market segment within the radio market, [the beneficiary's] style is distinctively Norteño, and his style is a result of the cultural uniqueness of the music genre. As his radio show's popularity indicates, [the beneficiary] has already proven himself to be highly regarded and respected by the Norteño fans. This is the reason why the petitioner wishes to engage his services for their radio programming. Through his commentaries riddled with social and cultural cues specific to the genre of music, [the beneficiary] will be able to further the radio audience's understanding of the music and culture behind this unique style of music from northern Mexico.

In the notice of denial, the director acknowledged that the beneficiary is a successful disc jockey in Mexico with knowledge of Mexican regional music. The director determined that the beneficiary's commentaries on Mexican music do not appear to make him a culturally unique performer for the purposes of the P-3 classification.

Upon review, and for the reasons discussed below, the AAO concurs with the director's determination that the petitioner has failed to establish that the beneficiary's performance as a disc jockey and on-air personality is culturally unique.

III. Culturally Unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or presentation is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work. The petitioner must also provide evidence that all of the beneficiary's performances or presentations will be culturally unique events.

A. *Affidavits, testimonials or letters from recognized experts*

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit 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. The petitioner has submitted a total of eleven (11) letters in support of the petition.

The petitioner submitted a letter dated April 7, 2010 from [REDACTED] a Mexican newspaper published in the city of Ensenada. [REDACTED] states that the beneficiary "has stood out for his skills as a radio announcer specialized in broadcasting news about Mexican culture" and is "ideal for working as the cultural bond between Mexico and the other communities of this country that are spread around the world."

[REDACTED] provided a letter dated April 1, 2010. [REDACTED] states that the beneficiary has worked as an announcer in Ensenada, Mexico for more than 12 years, and that his "active participation in the promotion of Mexican culture and roots statewide has been outstanding, through productions broadcasted through several means of communication." He describes the beneficiary as "an integral announcer able to broadcast the knowledge he acquired throughout his career."

The petitioner provided a letter dated April 7, 2010 from [REDACTED] of the programming and artistic direction department of Radiorama Ensenada. The letter is addressed to "all the staff" and offers congratulations on the success of the radio stations Ke Buena 730 and Los 40 Principales 101.1. The letter notes that the program "No Te Duermas," co-hosted by the beneficiary, is "one of the most widely heard radio shows in Ensenada."

[REDACTED] provided a letter dated March 26, 2010, in which he stated that he recommends the beneficiary "as an integral, hardworking and honest person with vast experience in

the means of communication both in the locality and outside, since, through this company, [the beneficiary] has done important works in the whole state."

In a letter dated April 5, 2010, [REDACTED] and Promotion Manager for Ensenada's State Center of the Arts, confirmed that the beneficiary worked in Ensenada as an announcer for twelve years. [REDACTED] states that "he identifies himself with his cultural roots and his greatest vocation is to serve the community."

Finally, the petitioner's initial evidence included a letter dated April 1, 2010 from [REDACTED] of the Interior Division 3 of the Industrial Union of Employees and Television and Radio Artists (SITATYR) of Mexico. [REDACTED] confirms that the beneficiary is a highly-regarded announcer in the state of Baja California who "has stood out for being a person identified with his cultural roots who has stood out for spreading them in different radio programs." He states that "it is easy to recognize [the beneficiary] as an enthusiastic, hard-working, honest, creative person who is interested in spreading the culture he represents, the Mexican one, in any part of Mexico or abroad."

In the RFE issued on August 26, 2010, the director acknowledged the petitioner's claim that the beneficiary is a leading expert in Norteño music, while noting that the beneficiary himself does not perform Norteño music. The director acknowledged that the letters submitted indicate that the beneficiary promotes Mexican culture as an announcer, but failed to establish how radio announcing is a culturally unique art form. The director advised the petitioner to submit additional affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skills in performing or presenting a traditional or unique art form. The petitioner submitted three additional letters in response to the RFE.

The first letter, dated September 1, 2010, is from a [REDACTED] states:

This document is intended to verify that I know [the beneficiary] and that he is a good and honest worker. I also testify to the fact that he has had an exceptional career as a radio DJ who combines his knowledge of music in the Mexican regional genre, cultural and social cues that are commonly found in Nortena and other types of music in the genre, in addition, he provides cultural and other types of information in a way that is highly entertaining. Hosting a radio show in fact a performance art that requires not only artistic skills but competent knowledge of the subject matter as well, in this case Nortena music.

The petitioner provided a letter dated September 10, 2010 from [REDACTED] whose job title is [REDACTED] [REDACTED] with Universal Music Latin Entertainment. [REDACTED] certifies that the beneficiary "is a successful DJ with more than 12 years of experience in the field." He further states:

Through his successful carrier [*sic*], he has gained a considerable reputation as one of the most respected DJs in the area of Mexican culture. He can show through his experience that he has experience and skills in the radio field.

As Norteño and Mexican regional music continues to conquer more fans out side of Mexico, [the beneficiary's] insightful commentaries will be truly educational to new fans. He truly is a

knowledgeable professional and I wholeheartedly recommend his services. He is also an artist himself, and his radio shows are indeed performance that truly incorporates his deep understanding of the music genre, including its people, culture and social issues.

The third and final letter is from [REDACTED] also a Universal Music Latin Entertainment company. [REDACTED] states:

Throughout his more of [sic] 12 years of career in the radio industry, he has gradually established himself as one of the most successful DJs around the state of Baja California. Thanks to his very known radio experience, he has gained considerable reputation as noteworthy and talented performer in the radio industry as one of the most knowledgeable regarding the Mexican Regional music, particularly the Norteno genre. His intimate understanding of the social and cultural cues that are often found in such music as Norteno music from Mexico, truly distinguishes himself from others in the genre.

Because of his unique skills to provide insightful information regarding Mexican culture in a highly entertaining manner, he has provided his services in many high profile public events.

The director acknowledged that the letters submitted, particularly those submitted in response to the RFE, indicate that the beneficiary is a talented performer with great knowledge of Norteno music, and the ability to provide information regarding Mexican culture in an entertaining manner. The director also acknowledged that the beneficiary is stated to have a "unique style of Mexican humor." The director determined, however, that the beneficiary is not a performer of Mexican regional or Norteno music, and that his commentaries on such music do not make him a "culturally unique performer" for the purpose of this classification.

On appeal, counsel asserts that the director mischaracterized the beneficiary as a mere "radio announcer" rather than as a disc jockey and radio personality. Counsel asserts that the beneficiary is a performing artist who has created "comical characters and personalities" and who is well-established in the Mexican regional music genre. Counsel contends that the beneficiary is successful because of his unique performance and "not because he can read a script accurately."

In support of the appeal, the petitioner submits a letter from [REDACTED] Chicano News Media Association, who notes that a radio announcer is primarily concerned with conveying accurate information while "disc jockeys are valued for their distinct performance styles that are entertaining and engaging." [REDACTED] states that it "is a critically important element for a disc jockey for entertainment radio programming, particularly for the Latin music genre as they usually have distinct cultural overtone throughout their programming."

The petitioner also submits a letter from [REDACTED] of the Asociación de Cronistas de Espectáculos de Nueva York, Inc. (Association of Entertainment Critics or "ACE"). [REDACTED] states:

[The beneficiary] is a well established radio personality in the Mexican regional music genre whose radio programming is well known for his unique perspectives, understanding and knowledge of the music genre. The Mexican regional music, such as Norteno, Corrido and

Cumbia from Mexico is riddled with lifestyle and social cues that are unique and different. Furthermore, [the beneficiary] has established a unique style of performance as a Disc Jockey. Through characters [the beneficiary] created on his radio programs, [the beneficiary's] style of performance as an artist is [a] critically important aspect of his profession and his success as a Disc Jockey.

Upon review, the AAO concurs with the director's conclusion that the letters submitted in support of the petition fail to establish the beneficiary's skill in performing, presenting, coaching or teaching a unique or traditional art form, as required by 8 C.F.R. § 214.2(p)(6)(ii)(A).

On appeal, the petitioner focuses on establishing the difference between a "radio announcer" and a "disc jockey," emphasizing that the latter should be considered a "performing artist." Upon review of the director's decision, we note that the director does not refer to the beneficiary as a mere "radio announcer," but instead acknowledges his role as a disc jockey and entertainer. The director denied the petition based on a finding that the petitioner did not establish any culturally unique aspects of his performance as a disc jockey, not because the director determined that the beneficiary is not a performer or entertainer.

In order to establish that the beneficiary's style of performance as a radio disc jockey and personality is culturally unique, the petitioner must establish that the art form represents 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 AAO does not doubt the beneficiary's credentials as a disc jockey or his ties to his own native culture. However, the petitioner must establish that the beneficiary's performance as a "Mexican radio personality" or "Norteño disc jockey" is a recognized style of performance or artistic expression, methodology or medium that is distinguishable as unique within the field of radio broadcasting.

No explanation was provided regarding what, exactly, makes the beneficiary's form of artistic expression, methodology or medium, culturally unique. As noted by the director, the role of a disc jockey is not, in and of itself, a culturally unique or traditional art form. The beneficiary's combined knowledge of Mexican regional music and performance skills may make him, as an individual, a unique radio personality. Any disc jockey is expected to be knowledgeable about the music included in his or her program and to present an engaging and distinctive personality to the audience. The evidence fails to identify the culturally unique aspects of the performance that make the beneficiary's on-air personality and performance style distinct to a particular group of persons and recognizable as a unique style of artistic expression that exists in Mexico's culture or a sub-culture.

With respect to the letters submitted, we note that the letters from [REDACTED] and [REDACTED] fail to mention any cultural aspects of the beneficiary's skills as a disc jockey, while [REDACTED] merely states that the beneficiary is a "radio announcer specialized in broadcasting news about Mexican culture." None of these letters attests to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional art form. The remaining letters submitted at the time of filing refer to the beneficiary's identification with his Mexican cultural roots and his participation in spreading and promoting Mexican culture through radio broadcasting. Vague references to Mexican culture are insufficient to meet the petitioner's burden of proof. Such statements fail to identify the beneficiary's culturally unique skills or the unique art form to which he applies those skills.

The letters submitted in response to the RFE discuss the beneficiary's "understanding of the social and cultural cues that are often found in such music as Norteno music from Mexico," and his ability to combine his knowledge of Mexican regional music with the ability to provide cultural information in a way that is highly entertaining. Again, the letters provided no description of a specific and recognized culturally unique skill that is attributable to the beneficiary. The beneficiary's knowledge of Norteño music may be incorporated into his role as a disc jockey, but he is not a musician or performer of this music. The petitioner has provided no basis for equating the ability to speak knowledgeably about this style of music with performance or presentation of this claimed culturally unique art form.

The AAO recognizes counsel's claim that the beneficiary, as a disc jockey in the Norteño musical genre, "has followed the lifestyle and tradition of the music genre to create a unique style of performance art as a disc jockey." The testimonial evidence simply does not support this claim. 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 Obaighena*, 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 testimonial evidence makes no reference to the beneficiary's incorporation of a culturally unique "lifestyle and tradition" into his performance as a disc jockey, nor does it establish that such performance aspects are a recognized style of artistic expression, methodology, or medium among a distinct group of persons.

As a matter of discretion, USCIS may accept expert opinion testimony.¹ USCIS will, however, reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; 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.'").

¹ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

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 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).

As the AAO finds the testimonial evidence deficient for the reasons discussed above, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

B. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner submitted an article titled [REDACTED] is my passion" from the November 2009 issue of a publication that appears to be titled "Lo + in." The article indicates that the beneficiary has worked for several radio stations and currently hosts the popular nightly radio show [REDACTED] with his two co-hosts. The article indicates that the radio show is promising due to the beneficiary's experience, and notes that he has collaborated with large companies and interviewed important artists in the past. The article does not document how the beneficiary's performance as a radio disc jockey and on-air personality is culturally unique.

The petitioner also submitted an article titled [REDACTED] with [REDACTED] published in the April 29, 2010 edition of [REDACTED]. The article indicates that the beneficiary has an "unmistakable voice" and is the creator of the popular show [REDACTED]. The article indicates that the beneficiary and his co-hosts, "entertain both children and adults with their witticism." According to the article the show "has a mixture of rock, pop and group music" including regional Mexico music, which "stimulates all radio listeners of the city." Finally, the article indicates that the beneficiary is also known for his creation of the radio characters [REDACTED].

The petitioner indicated that it was submitting "additional news articles in which [REDACTED] is featured" as "Exhibit I." The petitioner submitted six additional articles from the website of [REDACTED]. Because the petitioner failed to submit certified 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. While the beneficiary's name appears in all of the articles, none of the Spanish-language articles appear to meet the plain language of this regulatory requirement by providing critical reviews of the beneficiary's performance or descriptions of how the beneficiary's performance is culturally unique.

The petitioner has not submitted any critical reviews of the beneficiary's performance or other published materials describing how the performance is culturally unique. Accordingly, the petitioner has not submitted evidence to meet this criterion.

Therefore, the petition was properly denied as the petitioner has not submitted evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

C. Evidence that all of the beneficiary's performances or presentations will be culturally unique events

As discussed above, the beneficiary will be performing as a disc jockey and on-air personality for the petitioner's Houston, Texas-based radio station. The petitioner has not identified the specific radio station, the nature of its

programming, or the specifics of the radio show or shows that the beneficiary will host. Therefore, even if the petitioner had established that the beneficiary is a culturally unique disc jockey, it would not have met its burden to establish that all of the beneficiary's performances in the United States would be culturally-unique events. 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)).

For example, the petitioner indicates that the beneficiary's on-air personality is inextricably linked with Norteño music and the Norteño lifestyle. The petitioner would therefore need to establish that the beneficiary's proposed performance as a disc jockey in the United States is intended to convey this music and lifestyle. If the beneficiary were, for example, coming to host a program that featured only Spanish-language dance or pop music, then it would not be reasonable to find that he would be utilizing his claimed culturally unique skills.

However, as the petitioner has not submitted evidence to establish that Mexican or Norteño "disc jockey performance art" is a culturally unique art form, the beneficiary's proposed role as a disc jockey cannot be considered culturally unique. The fact that the petitioner operates Spanish-language radio stations that may play culturally unique music is insufficient to establish that the beneficiary's activities as a disc jockey would involve 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 statute requires that the beneficiary may be granted P-3 classification "solely to perform, teach, or coach as a culturally unique artist or entertainer." Section 101(a)(15)(P)(iii)(II) of the Act. The fact that the beneficiary, as a disc jockey, plays and is familiar with Mexican regional music, does not make his performance as a disc jockey a culturally unique art form. The petitioner has not provided an evidentiary foundation for such a distinction in the beneficiary's work, nor had it established that disc jockeys in Mexico, in certain regions of Mexico, or within certain genres of music, are recognized as performers of a culturally unique art form.

IV. Conclusion

In summary, the statute requires that the beneficiary enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3) and 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

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 not been met.

ORDER: The appeal is dismissed.