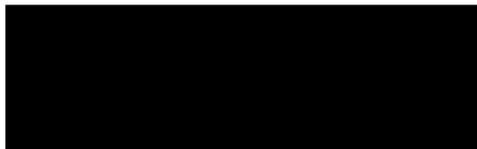


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 03 2011

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.

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 a performing artist in a culturally unique program. The petitioner is self-described as a Chinese culture and performing arts center. It seeks to employ the beneficiary as a performer and instructor of Chinese acrobatics for a period of one year.

The director denied the petition, concluding that the petitioner was unable to provide requested corroborating evidence to demonstrate that the beneficiary would perform in the events listed in the submitted itinerary.

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 emphasizes that it is a non-profit organization that has been invited to perform in many venues in the United States, but does not typically sign contracts because it "is a performing company with an aim to promote Chinese performing arts." The petitioner states that it had not yet entered contracts with two of the organizations in whose events it will participate, and submits these contracts on appeal. The petitioner suggests that the denial of the petition for the grounds stated displayed an "ignorance of the whole context of our business."

## **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.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

*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, event 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.

Pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(A), a petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of the performances.

## **II. Discussion**

The sole issue addressed by the director is whether the petitioner submitted evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(2)(ii)(C). The petitioner is required to provide an explanation of the nature of the events or activities, the beginning and end dates for such activities, and a copy of any itinerary for the events or activities.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 22, 2010. The petitioner, which claims to have three employees, indicated on Form I-129 that the beneficiary "will serve as Performer of Chinese acrobatics at our public performances, as an instructor to teach Chinese acrobatics in schools sponsored by [the petitioner]." The petitioner indicated that the beneficiary will work at the petitioner's address at [redacted] New York, as well as at "theaters, libraries, schools and community center." The petitioner stated that the beneficiary will work 20 hours per week at a weekly salary of \$250, and also receive \$200 for each performance. The petitioner requested a one-year petition validity commencing on April 1, 2010.

In a letter dated March 15, 2010, the petitioner stated that the beneficiary will be involved in the following activities and events:

[The beneficiary] will serve as an instructor and performer of Chinese acrobatics and Chinese martial arts for our on going school programs and workshops. He will teach Chinese acrobatic courses to children who have special interests in Chinese acrobatics special gift. He will also serve as a performer in our public music concerts.

In support of the petition, the petitioner submitted an itinerary of [redacted] for 2010-2011. The petitioner notes that it offers a daily, year-round music program, offered in the summer and after-school, as well as "Chinese Opera, Magic Art, Music and Dance Training Program for Students at this center from Monday to Saturday." The itinerary lists a total of 23 events for the period between April 2010 and August 2011, with exact dates for events. The events include Chinese music, opera, dance, magic and acrobatics performances. The event locations include [redacted], "[redacted]" the [redacted] in [redacted] in New York City, [redacted] a high school auditorium, [redacted] and [redacted] in New York. The itinerary indicates that the petitioner operates comprehensive training programs at its own center in [redacted] New York from June to August each year.

On June 30, 2010, the director issued a request for additional evidence ("RFE") in which he requested, *inter alia*, the following: (1) evidence that the petitioning organization was or has been contracted at all of the events listed in the itinerary, including letters from managers at each venue, along with promotional materials for the petitioner's listed performances; (2) evidence that the work lined up for the beneficiary is sufficient to allow the petitioner to compensate the beneficiary at the stated rate; (3) a copy of the lease agreement for the petitioner's office or center, along with photographs illustrating the nature of the business; and (4) evidence of all of the performances and lecture-demonstrations conducted by the petitioning organization in the last six months.

In a response dated August 10, 2010, the petitioner submitted the following as evidence of its "most recent" events:

- Copy of a Theatre Rental Agreement between the petitioner and the [REDACTED] on Culture and the Arts for a Chinese Music & Acrobatics Session to be held on September 19, 2010, along with a flyer for this event. The AAO notes that the rental agreement indicates on its face that it was "made November 12, 2008," yet it was ostensibly signed on June 10, 2010.
- A letter dated May 10, 2010 from the Chinese Students and [REDACTED], inviting the petitioner to perform at a "Mid-Autumn Celebration" tentatively scheduled for September 22, 2010.
- An invitation letter dated July 29, 2010 from the [REDACTED] in New Orleans requesting a performance from the petitioner for its "Mid-Autumn Celebration" tentatively scheduled for September 24-25, 2010 at [REDACTED], along with a follow-up e-mail dated from the organization dated August 9, 2010, requesting that the petitioner confirm receipt of the invitation.
- An invitation letter dated May 26, 2010 from the [REDACTED] requesting "the services of a troupe of ten to eleven acrobats" and an orchestra for Chinese American Night on August 1, 2010. The performance was to take place at [REDACTED]

The petitioner also submitted a copy of a lease agreement for the premises located at [REDACTED] New York. The lease is a residential lease for a "private Apartment to live in and for no other reason." The tenant is [REDACTED], and under the terms of the agreement, only [REDACTED] his spouse and his children may use the apartment. The petitioner submitted several photographs of a small room within the apartment in which it placed a placard naming the petitioning entity. The room includes a sofa, a desk with a computer, and several musical instruments. One of the photographs appears to depict a student receiving instruction in playing an instrument.

Finally, as evidence of the petitioner's previous events and activities during the last six months, the petitioner submitted:

- A letter from [REDACTED] stating that [REDACTED] and his cultural center "have partnered with us for numerous performances throughout the years," have performed at "many schools and libraries," and recently performed a Chinese New Year Show for [REDACTED] on February 13, 2010, and a show for [REDACTED] on June 1, 2010.
- A letter from the [REDACTED] dated January 5, 2010, inviting the petitioning organization to perform at a Chinese New Year Celebration at [REDACTED] on February 12, 2010.
- A letter dated March 27, 2010 from the [REDACTED] stating that he greatly enjoyed the performance of [REDACTED] (Chinese violin) at the [REDACTED] Chinese New Year Celebration.

- A letter dated July 21, 2010 from [REDACTED] stating that the petitioning organization "performed a series of Chinese cultural programs at the [REDACTED] on Sunday, February 7<sup>th</sup>, 2010."
- A program for "An Evening of Chinese Culture 2010" which indicates that the petitioning organization participated in the "Opening Ceremony: [REDACTED]" portion of the pre-game program. The program was held at a [REDACTED] professional basketball game.
- A letter dated December 10, 2009 from [REDACTED] inviting the petitioner to perform at New Year's events scheduled for January 2, 2010 and February 20, 2010 on [REDACTED]
- Program for the 2010 Chinese Art [REDACTED] held at [REDACTED] on May 9, 2010. [REDACTED] delivered a solo performance on the [REDACTED] at this event, but there is no mention of the petitioning organization.
- Program for an "Autumn Moon Celebration" presented by the petitioning organization in conjunction with the [REDACTED] on October 22, 2009. The petitioner highlighted [REDACTED] performance at this event.
- Program for a November 15, 2009 Chinese Opera performance held by the petitioner at the [REDACTED] New York.

The director denied the petition on August 18, 2010, concluding that the evidence provided in response to the RFE "is not sufficient to show to USCIS you have contracted employment for the proposed itinerary of events for the beneficiary . . . for the period of time requested on the petition."

On appeal, the petitioner asserts:

We are totally in disagreement with the Service Center. [The petitioner] is a non for profit organization. We have been invited to perform in many venues in the U.S., on many occasions, we do not sign contracts as we are a performing company with an aim to promote Chinese performing arts. At the time, when we responded to your request for evidence, we have not yet entered contracts with both [REDACTED] and [REDACTED]. Now these contracts were signed and ready for you to consider. Please find attached two contracts for the upcoming events.

. . . . The service ignored the fact that our organization is a not for profit organization and we perform regularly in schools and colleges, as well as libraries, and other cultural institutions. We have also been invited to give lecture-demonstrations at schools, colleges and cultural organizations throughout the New York and tri-state areas. In addition, we offer programs to educate school-age children in traditional Chinese folk arts and music. We give free lecture - demonstrations and classes for Chinese musical instruments, performing arts and other art forms.

In Petitioner's view, the Service's ignorance of the whole context of our business is indeed erred, unreasonable, bias[ed] and malicious.

In support of the appeal, the petitioner submits a new "summarization of agreement" with the beneficiary indicating the petitioner's intent to pay the beneficiary at least \$250 weekly for 20 hours per week, plus \$200 per performance during the period April 1, 2010 through March 31, 2011. The petitioner indicates that the beneficiary intends to perform at three confirmed events, including (1) the Chinese Music & Acrobatics Session to be held by the petitioner at [REDACTED] on September 19, 2010; (2) the Mid-Autumn Celebration sponsored by the [REDACTED] September 24-25, 2010; and (3) Mid-Autumn Celebration sponsored by the [REDACTED] to be held on October 1, 2010 at the [REDACTED] Connecticut. The petitioner states that the beneficiary "also agrees to serve as an instructor to teach students Chinese acrobatics at our center as scheduled."

The petitioner submits a performance agreement made between [REDACTED] and [REDACTED] for a performance at the "Mid-Autumn Festival" on October 1, 2010. The petitioning entity is not a named party to this contract.

The petitioner also submits a signed performance contract between [REDACTED] and the petitioning organization for a performance at the Mid-Autumn Celebration to be held at [REDACTED] on September 24 and 25, in exchange for a fee of \$4,000. The contract is dated August 2, 2010. The petitioner also resubmits the invitation letter from the [REDACTED] dated July 29, 2010. The AAO notes that, in response to the RFE, the petitioner submitted this invitation letter along with a follow-up e-mail from [REDACTED]. In the e-mail, [REDACTED] asked whether the petitioner's director, [REDACTED] had received the invitation letter. She also indicated that her organization had decided to pay the petitioner \$5,000 per show. This e-mail is dated August 9, 2010. Therefore, the newly-submitted contract signed on August 2, 2010 is not credible. If [REDACTED] did in fact sign a contract with the petitioner on August 2, 2010, there would be no reason for her to inquire about the petitioner's receipt of the invitation letter for the same event one week later. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Upon review, and for the reasons discussed below, the AAO will uphold the director's decision and dismiss the appeal.

First, the AAO concurs with the director's conclusion that the petitioner's failure to document that it has confirmed any of the events listed in the itinerary provided at the time of filing raises questions regarding the petitioner's ability to offer the beneficiary the terms of employment outlined in the petition. Although requested by the director, the petitioner has failed to document that its organization has performed or will perform at a single event listed on the submitted itinerary, which extends from April 16, 2010 until August 2011. The petitioner did provide some evidence of events that occurred prior to the start date of the itinerary, but such evidence was not responsive to the director's request for evidence to corroborate the information provided in the itinerary. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, many of the earlier events appeared to involve

solo musical performances by the petitioner's artistic director, rather than any performances by the petitioner's claimed "troupe" of performers.

Although the record now contains three signed contracts for events that were not included in the original itinerary, the evidence is not probative for several reasons. The petitioner's [REDACTED] with the [REDACTED] is dated November 12, 2008 but signed on June 10, 2010, and indicates an address for the petitioner that is inconsistent with other information in the record. The petitioner is not a party to the contract with the [REDACTED] and the deficiencies of the contract with the [REDACTED] have already been addressed above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner has not established that any of the events listed in its itinerary have occurred or will occur.

In addition to failing to submit documentation to corroborate the petitioner's commitment to any specific performances in which the beneficiary will participate, the petitioner has neither identified with any specificity nor documented when or where he will perform his role as an acrobatics instructor. As noted above, at the time of filing the petitioner stated that "[the beneficiary] will serve as an instructor and performer of Chinese acrobatics and Chinese martial arts for our on going school programs and workshops," and "will teach Chinese acrobatic courses to children." The petitioner claims to provide year-round instructional programs, including after-school and summer programs. According to the itinerary, summer programs are held at the petitioner's "center," and the petitioner has also stated that the beneficiary will "teach Chinese acrobatics in schools sponsored by [the petitioner]." The agreement submitted on appeal also states that the beneficiary "agrees to serve as an instructor to teach Chinese acrobatics at our center as scheduled." The petitioner's center-based and school-based instructional programs have simply not been documented. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

As noted above, when asked to provide a lease agreement for its place of business, the petitioner submitted its artistic director's residential apartment lease. The beneficiary would clearly not be teaching Chinese acrobatics courses to children in an apartment in which any commercial use is prohibited, nor is it reasonable to believe that he would otherwise be working [REDACTED]. The petitioner has not submitted evidence such as agreements or letters from the hosts of the petitioner's purported "school-based" programs or otherwise established the existence of such programs. Therefore, the petitioner has not established that it has work available for the beneficiary as an instructor.

Finally, we note that the petitioner claims to employ only three people, which raises further questions regarding its ability to provide the extensive cultural and arts programs described in the petition. While the petitioner has submitted some credible evidence of its involvement, or the involvement of its director, in

Chinese cultural events in the past, the AAO concurs with the director's conclusion that the petitioner has not established that the beneficiary would be providing the proposed performance or teaching services as described in the petition. Accordingly, the petition will be dismissed.

Additionally, beyond the decision of the director, the petitioner has not submitted a written consultation from a labor organization as required by 8 C.F.R. §§ 214.2(p)(2)(ii)(D) and 214.2(p)(7)(v). Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2 or P-3 classification can be approved. 8 C.F.R. § 214.2(p)(7)(i)(A). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)."

The petition will be denied and the appeal dismissed for the above-stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.