

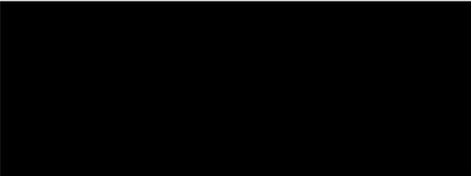


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

FILE: WAC 99 232 50991

Office: California Service Center

Date:

MAR - 7 2000

IN RE: Petitioner:
Beneficiary



PETITION:

Petition for Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(iii) of the Immigration and Nationality Act (Act), 8 U.S.C. 1101(a)(15)(P)(iii)

IN BEHALF OF PETITIONER:



Identifying information
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS



Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director of the California Service Center (director) and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, an entertainment and production company, seeks, as agent for the beneficiary, to employ him, part-time for four hours weekly, as a culturally unique performer in the P-3 classification for a fourth year (instant petition). The beneficiary impersonates leading female singers, dancers, and other entertainers in material of Iranian origin. On August 31, 1999, the director determined that the beneficiary did not enter the United States to give culturally unique performances or participate in culturally unique shows. The denial concluded that he did not satisfy the qualifications for the P-3 classification.

The petitioner appealed on September 30, 1999. Counsel stated that the decision erred because the director had already approved three petitions and extensions. Counsel attached the complete file, with documents said to be the same or similar. They compelled, it was said, the approval of the petition based on previous findings of eligibility.

In § 101(a)(15)(P)(iii), 8 U.S.C. 1101(a)(15)(P)(iii), the Immigration and Nationality Act (Act) provides P-3 classification to an alien having a foreign residence which the alien has no intention of abandoning, who 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 who seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

"Culturally unique" is defined as "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." 8 C.F.R. 214.2(p)(3).

In general, 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. The artist or entertainer must come 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. 8 C.F.R. 214.2(p)(6)(i)(A)-(B).

Every petition for a P nonimmigrant must include the written contract between the petitioner and the beneficiary, or a summary of the terms of their oral agreement of employment, as well as an explanation of the events or activities with their itinerary and

beginning and ending dates. 8 C.F.R. 214.2(p)(2)(ii)(B)-(C). An agent must, specially, submit its contracts, other employers', and theirs with the beneficiary. 8 C.F.R. 214.2(p)(2)(iii)(E)(1)-(2).

In the petition, the agent alleged its status as an employer only as to four hours of work monthly. The petitioner demonstrated no evidence as to the balance of the beneficiary's employment. The "Deal Memo" included no current itinerary and a different rate of compensation than the instant petition stated.

To the point of the beneficiary's culturally unique performances, the transmittal continued,

... His performances provide an authentic view of the [P]ersian [c]ulture to audience[s] from various nationalities. His performances are culturally unique as there had never been any Iranian artist who can act and/or perform as a Female Impersonator....

The record supports both inferences, that the beneficiary has never performed this act in Iran and neither has any other artist. It expounds no unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation of Iran. 8 C.F.R. 214.2(p)(6)(i)(A)-(B). Even less did the evidence evoke a program of an Iranian 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. 8 C.F.R. 214.2(p)(3). The petitioner was not promoting a culturally unique program, howsoever it was personally unique to the formerly Iranian beneficiary. 8 C.F.R. 214.2(p)(1)(ii)(C). The beneficiary is a naturalized citizen of Norway.

The record contained many testimonials, affidavits, media entries, and experts' opinions. They generally stated that the beneficiary qualified for the P-3 classification as the exponent of forms culturally unique to Iran. None warranted the authenticity of female impersonation of ethnic performances as emanating from a traditional art form of Iran. 8 C.F.R. 214.2(p)(6)(ii)(A)-(B).

The Deal Memo acknowledged that the petitioner intermittently leaves the United States. No evidence supported his physical presence in the United States on the date of the filing of the petition to extend his stay. 8 C.F.R. 214.2(p)(14)(i). Even on appeal, no consultation from a labor organization satisfied the requirement for the instant petition. 8 C.F.R. 214.2(p)(7)(i)(A)-(C). In § 214(c)(6)(A)(iii), 8 U.S.C. 1184(c)(6)(A)(iii), the Act mandates its submission with the petition.

Counsel contends that the director must always accord P-3 status once the petitioner establishes a petitioner's eligibility for status. On the contrary, the Attorney General must insure the departure of the nonimmigrant upon the expiration of the time prescribed for admission. See § 214(a)(1) of the Act, 8 U.S.C.

1184(a)(1). In view of the defects in the evidence for culturally unique performances, the director reasonably concluded that the beneficiary had completed the purpose of this admission. That determination will not be disturbed. 8 C.F.R. 214.2(p)(14)(i).

Approvals of previous petitions caused no occasion to examine the several elements of proof which control the present order. The petition's allegations and the petitioner's contentions properly introduced them in these proceedings.

Counsel has cited unpublished decisions of the Service in support of the appeal. Their relevance is limited. Service decisions designated as binding precedents are published and made available to the public pursuant to 8 C.F.R. 103.3(c). Unpublished decisions are neither precedents nor binding.

The burden of proof rests solely with the petitioner in these proceedings. See § 291 of the Act, 8 U.S.C. 1361. The petitioner did not sustain it.

ORDER: The appeal is dismissed.