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

[redacted]

FILE: EAC-00-108-53451 Office: Vermont Service Center Date: FEB 28 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is described as a non-profit Chinese cultural center and performing arts company. The beneficiary is described as a performing artist with specialty in Chinese opera. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking extension of stay of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act") as an entertainer in a culturally unique field. The petitioner seeks the extension of the beneficiary's stay for approximately 14 months so that he may continue to participate in the various activities of the organization.

The director denied the petition finding that the petitioner failed to adequately establish the actual itinerary of events in which the beneficiary would participate or the terms of his employment with the petitioner including the terms of remuneration. The director noted that the beneficiary had been in the United States in P-3 classification for two and one-half years and that there was no evidence of his specific work performed for the petitioner or any indication that he has been paid for his services.

On appeal, counsel for the petitioner stated, in part, that the extension is requested so that the beneficiary can take part in a New Millennium celebration sponsored by the petitioning organization and to perform in the 2000-2001 Beijing Opera season sponsored by the petitioner. It was further stated that the beneficiary will give lectures and demonstrations on Beijing Opera at various libraries and museums.

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.

8 C.F.R. 214.2(p)(3) provides, in pertinent part, that:

> <u>Culturally unique</u> 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.

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.

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 definition of a contract is at 8 C.F.R. 214.2(p)(3),

> *Contract* means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

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 the 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
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> (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.

At issue in this matter is whether the petitioner has adequately established the terms under which the alien will be employed pursuant to the pertinent regulations.

On the petition form, the petitioner is described as a performing arts company operating with 32 volunteers. There were no paid performers disclosed on the form.

In the decision, the director noted, in part, that the petitioner stated that the beneficiary was not paid for his services during the past two and one-half years and that there was no clear record of sustained work performed for the petitioning organization.

In the statement on appeal, counsel explained that the beneficiary had been teaching "stage fighting" and martial arts at a local Boys Club and presenting lectures on Chinese Opera to the general public.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner stated that it has no employment contract with the beneficiary. Counsel stated on appeal that the beneficiary was paid during the opera season, but submitted no evidence of such payment. The record contains no clear description of the theatrical season supported by the petitioning organization, the number of performances within the season, or any remuneration of the performers. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent affirmative evidence, it cannot be concluded that the petitioner has sustained its claim of having employed the beneficiary as a performing artist or that he will be so employed in the future. Therefore, it must be concluded that the petitioner failed to submit a sufficient summary of the terms under which the alien will be employed as required by the regulations.

In addition, all activities of the beneficiary must be shown to be culturally unique. 8 C.F.R. 214.2(p)(6)(ii)(C). Counsel's statement indicates that the majority of the beneficiary's stated services have been teaching martial arts at a Boys Club. This activity has not been shown to be "culturally unique." Employment for more than one employer requires the filing of a separate petition. 8 C.F.R. 214.2(p)(2)(iv)(C). Any work performed as an employee of a Boys Club would require a separate petition. In this case, the petitioner has not provided a complete accounting of the beneficiary's employment by the petitioner and has not provided a complete description of the terms of the future employment.

The director did not question the beneficiary's ability to perform as an artist in a culturally unique program. However, the record

in this matter fails to establish that the beneficiary seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer under a specific commercial or noncommercial program as contemplated by the statute. The petitioner's claim that the beneficiary will participate in an unspecified performing arts season and will deliver periodic public lectures is not sufficient to sustain its burden of proof in this proceeding.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.