U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: EAC 02 230 52101 Office: VERMONT SERVICE CENTER Date: AUG 20 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The petitioner in this matter is a dance studio. The beneficiary is a 33-year old citizen of Germany. According to Bureau records, he was last admitted to the United States on March 9, 2003, in J-1 classification. [1]

The petitioner seeks P-3 classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), as a dance instructor. The petitioner seeks to employ the beneficiary for an indefinite period an annual salary of $35,000.

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:

> *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.

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

[1] It is unknown whether the beneficiary is subject to the two-year foreign residency requirement of 212(e) of the Act.

> 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 director denied the petition, finding that the petitioner failed to provide the required consultation. The director further found that the petitioner failed to establish that the beneficiary qualifies for classification within the meaning of section 101(a)(15)(O)(i) of the Act.

On appeal, counsel for the petitioner submits additional documentation.

The director's decision was deficient in that it failed to examine the evidence as it relates to P-3 classification. The petitioner seeks P-3 classification of the beneficiary. The director concluded that the petitioner failed to establish that the beneficiary qualifies for O-1 classification. Accordingly, this matter will be remanded for the purpose of a new decision. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility for P-3 classification.

ORDER: The director's decision of January 30, 2002 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO.