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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: WAC 02 264 54471 Office: CALIFORNIA SERVICE CENTER Date: AUG 20 2003

IN RE: Petitioner:
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:

[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 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 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner in this matter is a music production and entertainment company. The beneficiaries are members of a group titled [redacted] comprised of one singer and two actors. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), as entertainers in a culturally unique program. The petitioner seeks to employ the beneficiaries for a period of three months at an undetermined salary.

The director denied the petition, finding that the petitioner failed to provide the required consultation and failed to provide any evidence set forth at 8 C.F.R. § 214.2(p)(6)(ii). The director further found that the evidence submitted failed to establish that the events and the group are culturally unique. The director also determined that the petitioner failed to provide a contract or the terms of an oral contract.

On appeal, the petitioner submits additional documentation.

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)(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.

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 first issue to be evaluated in this proceeding is whether the petitioner satisfied the requirement of submitting a consultation to the Bureau. 8 C.F.R. § 214.2(p)(6)(v) states that all petitions for P-3 classification shall be accompanied by a consultation with an appropriate labor organization. The petitioner asserted that no appropriate labor organization exists. The petitioner's argument is not persuasive. Appropriate labor organizations for singers and stage actors include the American Federation of Musicians and the Actors Equity Association. The petitioner failed to satisfy this requirement and to overcome the director's objection.

The second issue raised by the director is whether the petitioner established that the beneficiary is qualified as a culturally unique performer. As evidence that the beneficiary is qualified as a culturally unique performer, the petitioner submitted an attestation written by the Director of [redacted] Inc. The petitioner submitted a second attestation written by the Deputy Director of the [redacted] Neither attestation satisfies the requirements of 8 C.F.R. 214.2(p)(6)(ii)(A) because they fail to state the credentials of the attestations' authors and the basis of their knowledge of the beneficiary's skill.

In relation to 8 C.F.R. § 214.2(p)(6)(ii)(B), the petitioner submitted several reviews of the individual performers. None of the reviews are about the beneficiaries as a group. Initially, the petitioner submitted untranslated reviews. On appeal, the petitioner submitted translations. Two reviews are about Dong Dao, a country folklore singer. A third review is about the actor and producer Phuoc Sang and it is silent as to whether his performance is culturally unique. No translated reviews were submitted about the third member of the group, Kieu Oanh. In review, the petitioner has failed to establish that the beneficiaries are qualified as a culturally unique entertainment group.

The next issue raised by the director is whether the petitioner established that the beneficiaries are coming to the United States to perform, teach or coach as culturally unique artists in a culturally unique program.

In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States in order to perform, teach, or coach as a culturally unique artist in a commercial or noncommercial program that is culturally unique.

In this case, the petitioner indicated on the Form I-129 petition that the beneficiaries would perform Vietnamese music and comedy plays.

On appeal, the petitioner submits a statement indicating that he had signed a contract with the Flint Center Theater in Cupertino, California for one show and that he had reached an oral agreement with two other theaters. The written contract states that the petitioner will use the theater for a Vietnamese concert. This evidence is not persuasive given that it is unsigned.

On review, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner has failed to establish that the beneficiaries are coming to the United States to perform and teach as culturally unique artists in a culturally unique program.

The burden of proof in these proceedings rests solely 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.