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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

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

[redacted]

FILE: WAC 03 030 54077 Office: CALIFORNIA SERVICE CENTER Date: MAR 3 1 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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an acrobatic performance and entertainment production company. The beneficiaries are four Chinese acrobats who were formerly members of the Zhengzhou Acrobatic Troupe of China. The petitioner filed a Form I-129 (petition for a nonimmigrant worker) seeking P-3 classification of the beneficiaries, 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 performing artists in a culturally unique program. The petitioner seeks to employ the beneficiaries temporarily in the United States for one year at a salary of $2,000 per month.

The director denied the petition, in part, on the grounds that the petitioner failed to establish that the beneficiaries' performance is culturally unique and that all their performances would be culturally unique events. The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiaries have received recognition for excellence from cultural organizations, agencies, critics, government agencies or other recognized experts.

On appeal, counsel states that the petitioner has submitted clear and convincing evidence to prove that all of the performances or presentations will be culturally unique events and that the director interpreted the law too narrowly.

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) 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)(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
>
> (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.

The first issue raised by the director is whether the petitioner established that the beneficiaries' performance is culturally unique. The petitioner provided evidence in the form of a five-page letter from a recognized expert, [redacted] Master Trainer and Artistic Director at the Circus Center of San Francisco, attesting to the authenticity of the beneficiaries' skills in performing a culturally unique program. [redacted] wrote:

> [The beneficiaries] can display the strength and beauty of Chinese acrobatics, from Unicycling, Chair Pagoda, Lion Dance to Martial Arts. All of these performers are from the famous Zhengzhou Acrobatic Troupe of China, which is one of the oldest in China. ... Its reputation is proved by various national and international awards. It will be very interesting and educational for American students to enjoy the breathtaking feats of strength, endurance, flexibility, balance, contortion, and magic. I believe that their display, interpretation and representation in the art

> of Chinese acrobatics will substantially benefit cultural interests in the United States. It will help encompass, embody, and integrate the culturally-unique and stylistic elements of the Chinese tradition to enhance our appeal to a broad mass of American audience.

In review, the petitioner has established that the beneficiaries' performance is culturally unique.

The second issue raised by the director is whether the petitioner established that all of the beneficiaries' performances would be culturally unique events. The petitioner provided the Bureau with a letter from a booking company, the Bureau of Lectures and Concert Artists, stating that it had signed an artist engagement contract with the petitioner, booking the beneficiaries to perform at school assemblies throughout the United States. The letter's author states that the student audiences "will witness an amazing demonstration of acrobatics, while at the same time learn much about Chinese culture, customs, schools, etc." The petitioner provided the Bureau with letters, including one written by a Community Education Director, stating that "the Chinese Star Acrobat team ... entertained our students at the Truman Public School in Truman, Minnesota. The students and staff enjoyed their performance very much. We also learned about Chinese history and the history of acrobatics." The principal of Crescent Elementary School wrote: "Today the China Star Acrobats . . . performed for our students.. . . In addition to the excellent acrobatic stunts and skills on display, the children and staff also learned a great deal about Chinese history and culture." The petitioner provided the Bureau with an itinerary showing that the beneficiaries are scheduled to perform at 122 schools in a five month period. The record contains a copy of a talent agreement between the Bureau of Lectures and Concert Artists (BLCA) and the petitioner providing that the petitioner would provide the services of a four-person Chinese acrobatic group in filling all engagements arranged by BLCA. The petitioner has provided sufficient evidence that all of the beneficiaries' performances would be culturally unique events.

The final issue raised by the director is whether the petitioner established that the beneficiaries have received recognition for excellence from governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts. The pertinent regulations were amended in 1994 to remove the qualitative standards contained in an interim rule. *Temporary Alien Workers Seeing H-1B, O, and P Classifications Under the Immigration and Nationality Act*, 59 *Fed. Reg.* 41818 (August 15, 1994). This portion of the director's decision shall be withdrawn.

The petitioner has overcome the director's concerns.

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 met that burden.

ORDER: The appeal is sustained.