

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: FEB 11 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiaries:

PETITION: Petition for a Nonimmigrant Worker under 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking 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 an entertainment group coming to the United States to perform under a culturally unique program. The petitioner is self-described as a Middle Eastern entertainment production company. It is sponsoring the beneficiaries' U.S. tour, which is tentatively comprised of concerts in eight U.S. cities over a period of approximately five weeks.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiaries' artistic field is culturally unique as defined at 8 C.F.R. § 214.2(p)(3) or that their performances will be culturally unique events; and (2) that the beneficiaries qualify as a "group" under the regulatory definition of that term. The director further found that the petitioner "made no prima facie showing that it has a commercial or non-commercial program as required by 8 C.F.R. § 214.2(p)(1)(ii)(C), and that the petition "lacked the mandated evidence to prove traditional or unique performances and presentations under the culturally unique program of the petitioner." Finally, the director observed that the petitioner failed to submit a written consultation from a labor organization.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision is "fraught with factual errors, misstatements of the evidence, internal inconsistencies, erroneous legal analyses and incorrect legal conclusions." Counsel submits a lengthy brief in support of the appeal.

I. The Law

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.

The regulation at 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.

Group means two or more persons established as one entity or unit to perform or to provide a service.

Member of a group means a person who is actually performing the entertainment services.

The regulation at 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.

Finally, the regulation at 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 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.

Finally, the regulation at 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.

II. Facts and Procedural History

The petitioner is self-described as a "Middle Eastern entertainment productions company." In a letter in support of the petition, the petitioner stated that it has contracted the principal beneficiary, a "popular Lebanese singer and songwriter," [REDACTED] and his band, [REDACTED] to perform an eight-city U.S. tour. The petitioner described the tour as "a highly anticipated event in the Arab and Middle Eastern-American communities across the United States." The petitioner stated that "the tour will greatly enhance cultural appreciation and understanding of the uniqueness and beauty of Middle Eastern music."

The petitioner provided the following information regarding the performances:

The concert will feature [REDACTED] songs from a wide range of his hit singles and CD's from the early 1990s onward. The songs will be performed in the Arabic language. The style of the music is Arabic pop, which is best described as a mixture of classical Arabic music rhythms and rhythms common in popular Western music. The instruments range from classical, such as the oud and the tableh, to modern, such as the key board, the guitar, and drums.

In addition to their own songs, the band will perform songs from the legendary Arab singers [REDACTED].

The petitioner indicated that [REDACTED] band includes eight members, who have all worked with him for at least two years, and indicated that they have performed together in Egypt, Australia, Tunisia, Morocco, France and UAE, as well as the United States. The petitioner identified the instrument played by the members of the band, which includes two keyboardists, a percussionist, a drummer, a bass guitar player, two back-up vocalists, and a tableh player. The petitioner explained that the tableh originated in the Middle East and is commonly used in Middle Eastern music. The petitioner also provided brief biographical information regarding [REDACTED], both late Egyptian actors and singers, and [REDACTED], described as the "voice of Lebanon" and [REDACTED] personal "singing idol."

The petitioner further discussed [REDACTED] work as "an acclaimed Lebanese singer, songwriter, composer and instrumentalist":

In addition to singing and writing his own songs, [REDACTED] plays several instruments including the guitar, oud, piano and drums. [REDACTED] began playing music at a very young age and caught the Arab public'[s] attention after winning a music and art contest sponsored by the Lebanese TV Station,

Talented, charismatic and blessed with good looks, [REDACTED] has a wide appeal in the Middle East and North Africa, particularly among young people. For example, a public survey conducted by several Lebanese radio and TV stations hailed [REDACTED] as "the most photogenic male artist in the Middle East." There are several fan sites devoted to him on the internet and several of his videos appear on Youtube.

The petitioner's initial evidence included: (1) a "no objection" consultation letter from the American [REDACTED]; (2) "expert opinion letters" from the Embassy of Lebanon and Arab [REDACTED]; (3) a biography for principal beneficiary I [REDACTED] (4) a selection of media reviews and articles about [REDACTED]; (5) a copy of the petitioner's contract with the beneficiaries and (6) the beneficiaries' itinerary for the eight-city tour. The director subsequently issued an RFE and reviewed the petitioner's response before denying the petition.

In the notice of decision, the director erroneously stated that the petitioner did not submit a written consultation from a labor consultation. As the petitioner submitted a consultation letter from the [REDACTED] the director's finding was incorrect and is withdrawn.

However, upon review of the totality of the evidence, and for the reasons discussed below, the director's finding that the petitioner failed to establish that the beneficiaries' performance is culturally unique will be affirmed and the appeal will be dismissed.

III. Issues on Appeal

A. Entertainment Group

The first issue to be addressed is whether the petitioner established that the beneficiaries are coming to the United States as an entertainment group for the purpose of developing, interpreting, representing, coaching or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical or artistic performance or presentation, and whether their performances will be culturally unique events.

As a preliminary matter, the AAO will address the director's finding that the petitioner failed to establish that the nine beneficiaries included on this petition are coming to the United States to perform as an entertainment group.

The definitions at 8 C.F.R. § 214.2(p)(3) provide that "group" means "two or more persons established as one entity or unit to perform or to provide a service." A "member of a group" is "a person who is actually performing the entertainment services."

While the testimonial evidence and published articles in the record relate primarily to singer [REDACTED] the petitioner has provided evidence that the accompanying beneficiaries are musicians who have regularly played with [REDACTED] in the past, although perhaps not always at the same time as one unit. For the purpose of the eight-city tour proposed in the petition, the record establishes that the nine beneficiaries will perform together as one entity, and all included beneficiaries are musical performers who will actually participate in providing entertainment services, and therefore qualify as members of a group.

Counsel correctly notes that unlike groups seeking classification under the P-1 classification, there is no statutory or regulatory requirement that the members of a P-3 group have performed together for any specific period of time. Accordingly, we will withdraw the director's determination that the beneficiaries do not qualify as an entertainment group.

B. Culturally Unique

Turning to the question of whether the performance of the group is culturally unique, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiaries' performance or presentation is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work. The petitioner must also provide evidence that all of the beneficiaries' performances or presentations will be culturally unique events.

1. Affidavits, testimonials or letters from recognized experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or 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. The petitioner has submitted a total of two (2) letters in support of the petition.

The petitioner submitted an undated letter from [REDACTED] Lebanon in Washington, DC. The author states:

[REDACTED] . . . is a well known Lebanese singer, songwriter, composer and instrumentalist. Since winning a music and art contest sponsored by the Lebanese TV station, Lebanese Broadcasting Corporation International, [REDACTED] has been known to his fans in the Middle East and beyond as "[REDACTED]"

[REDACTED] as [sic] honored by the Lebanese Ministry of Education and Tourism on February 24, 1999 and was presented with an award on May 9, 1999 for his charitable

work and contributions to the country of Lebanon. He recently performed a concert for peace after the presidential election of [REDACTED] to a crowd of over 250,000 people.

It is known that in addition to his own songs, he is well adapt [sic] in performing songs from legendary Arab singers such as [REDACTED]

[REDACTED] This makes the tour not only viable to the Lebanese communities here in the United States, but to all Arab and Middle Eastern communities as well as to the fans of Arabic music who appreciate our musical art forms of today as well as that of the golden ages. [REDACTED] is well known for being able to capture such classics and present it to all sectors and age groups of the Arab communities abroad.

The second letter was from [REDACTED]

[REDACTED] letter was similar in content. She noted [REDACTED], " and stated that he is a favorite artist among the younger members of the [REDACTED] stated that the beneficiary "had several concerts on Arabic speaking satellite channels including his most recent concert in Egypt to over 50,000." She also confirmed that "he performs songs from legendary Arab singers that the youth only hear of through their parents and grand parents" and states that the tour will showcase "many musical art forms of our Arabic and Middle Eastern cultures." She concludes by noting that "[REDACTED] is known to capture the many styles of pop, modern and classical music to appeal to all generations."

In response to the RFE, the petitioner provided a second letter from [REDACTED] who stated that she is "intimately involved for the last eight years in promoting the music and arts of the Middle East in the U.S." through her work with [REDACTED] and another organization called [REDACTED] She described the beneficiaries as "a well-known Lebanese music group who regularly performs together." With respect to the band members supporting [REDACTED] she states:

Arabic music requires musicians who can play off of subtle nuances and styles that the singer emotes. This can only be achieved by musicians that have regularly played for some period of time together with the lead singer. Arabic music will not always follow a particular note sequence, and a singer cannot just request any random musician to play in a particular key, rather than musicians who must be intimately familiar with the singer's unique style in order to bring cohesion to the musical performance.

The director denied the petition based, in part, on a finding that "there is no evidence that the beneficiaries' field is culturally unique." However, the director did not mention or discuss the evidence submitted to satisfy the regulatory requirement at either 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and instead appeared to base his conclusion on a finding that the concerts at which the beneficiary will perform are primarily focused on specific popular music styles such as "jazz" or "pop." When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. See 8 C.F.R. § 103.3(a)(1)(i).

On appeal, counsel asserts that the director overlooked the [REDACTED] consultation which states that [REDACTED] presents a unique performance representative of the cultural and musical traditions of Lebanon." Further, counsel asserts that there was no evidence submitted that would suggest that the beneficiaries will be performing "jazz" or "pop" music. Counsel refers back to the petitioner's own statements regarding the beneficiary's music, and asserts that the style of music is "popular Arabic music fused with classic Arabic sounds," not "western songs rendered in Arabic." Counsel asserts that the petitioner's evidence included letters from recognized experts and established that the beneficiary's will perform "[REDACTED] famous Arab songs and other classic Arab songs" and thus "would be performing music that is culturally unique to Lebanon and the Arab world."

Upon review of the testimonial evidence, the letters submitted in support of the petition fail to establish the beneficiaries' skill in performing, presenting, coaching or teaching a unique or traditional art form, as required by 8 C.F.R. § 214.2(p)(6)(ii)(A). The petitioner is required to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or 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.

Neither [REDACTED] has provided sufficient information about their credentials to establish that they are "recognized experts" in the field of Arab or Lebanese music. The regulation at 8 C.F.R. § 214.2(p)(2)(iii)(B) provides that affidavits from recognized experts must "set forth the expertise of the affiant and the manner in which the affiant acquired such information." *See also Matter of Skirball*, 25 I&N Dec. 799, 802-806 (AAO 2012) (discussing letters from recognized experts). Although both authors suggest that there are cultural elements to the beneficiaries' musical performances, neither individual can establish their credentials as recognized experts in this area, nor do they describe with any specificity the cultural or traditional elements of the performances.

Both authors describe [REDACTED] as a well-known and award winning singer, songwriter and musician who is widely known as "[REDACTED]" and state that he sings his own popular songs and songs from "legendary Arab singers" and "the classics." [REDACTED] stated that his tour will showcase "many musical art forms of our Arabic and Middle Eastern cultures" and notes that [REDACTED] sings "pop, modern and classical music." Neither of these letters attests to the authenticity of the beneficiaries' skills in performing, presenting, coaching, or teaching a unique or traditional art form. Vague references to Middle Eastern or Arabic culture and its "many musical forms" are insufficient to meet the petitioner's burden of proof as they fail to identify the beneficiaries' culturally unique skills or the art form to which they apply those skills. Neither author explains how the pop, modern and classical music presented by the beneficiaries is a "unique or traditional art form." The testimonial evidence makes no specific reference to the beneficiaries' incorporation of culturally unique elements into their performances, nor does it establish that the types of music presented by beneficiaries are recognized styles of artistic expression among a distinct group of persons.

As a matter of discretion, U.S. Citizenship and Immigration Services (USCIS) may accept expert opinion testimony. However, USCIS will reject an expert opinion or give it less weight if it is not in

accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* The admissibility of and weight to be accorded expert testimony may vary depending on such factors as the extent of the expert's qualifications, the relevance of the testimony, the reliability of the testimony and the overall probative value to the specific facts at issue in the case. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011)(citing Fed. R. Evid. 702).

Here, for the reasons discussed above, the expert opinion testimony is lacking in probative value, as it does not assist USCIS in determining whether the beneficiaries are skilled in 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. The three letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiaries' performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

On appeal, counsel asserts that the director overlooked the AGMA consultation in determining whether the petitioner has met this evidentiary requirement. As noted above, the director incorrectly observed that the petitioner failed to submit a written consultation from a labor organization. Nevertheless, the letter from [REDACTED] does not satisfy this evidentiary criterion. The "no objection" letter from [REDACTED] satisfies the petitioner's burden to submit a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D). Consultations are advisory and are not binding on USCIS. *See* 8 C.F.R. § 214.2(p)(7)(i)(D). The [REDACTED] statement that the beneficiaries "present a unique performance representative of the cultural heritage and musical traditions of Lebanon," is simply insufficient to establish that the beneficiaries' performances are "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." It is unclear how the [REDACTED] reached this conclusion based on the evidence submitted with the petition.

Based on the foregoing discussion, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner provided an untitled article from an issue of *Cleo* magazine. The interview mentions [REDACTED] recent visit to Egypt and his latest music video, in which he "plays the role of a successful car racer living in a caravan in the wilderness, who gets a visit from two racing representatives, one of whom happens to be an attractive young lady." The article goes on to note that the "novel plot and [REDACTED] alluring presence were spiced up with an infectious dance which the young

star came up with spontaneously as they were shooting." The article discusses the beneficiary's previous experience with shooting music videos and indicates that [REDACTED] has been considering appearing in films. The article includes some biographical information, including his discovery as a singer in 1996, his degrees in law and interior design, and his family's support of his musical career.

The petitioner submitted a brief review titled "[REDACTED]" which was published on the website [REDACTED]. According to the article, the beneficiary's show lasted two hours and he performed "most of his wonderful hits" and "some classic songs." The article mentions that [REDACTED] was nominated for a "[REDACTED]" and mentions how readers can vote for him.

The petitioner submitted an article titled "[REDACTED]" which appeared on the website [REDACTED] in June 2008. The article provides recent news for "[REDACTED]" noting that he was busy with preparations for the opening of his restaurant in Morocco, recently performed for 250,000 people in Beirut, was recently offered honorable membership in the Lions Club, signed with his old record label, and was expected to release a new album soon.

The petitioner submitted a brief biography of [REDACTED] published by the website [REDACTED]. The article mentions that the beneficiary is a Lebanese singer, songwriter, composer and instrumentalist. The article indicates that "[h]e swam against the flow and insisted to take part in developing oriental music, to do very special work according to his own taste with lots of bravery and uniqueness in his songs, clips and even his look"

The petitioner submitted a [REDACTED] article about [REDACTED] from the website [REDACTED]. The article provides biographical and career highlights for the beneficiary and mentions that he was honored by the [REDACTED] and "has been hailed the [REDACTED]"

Finally, the petitioner provided an internet article published by [REDACTED] which mentions [REDACTED] early career and subsequent career highlights, including his songs, whose titles translate to "[REDACTED]" and [REDACTED] and his debut album released in 2002, "[REDACTED]". The article indicates that the album "cemented [REDACTED] status as a Professional Pop Star in the Middle Eastern Countries."

Upon review, the submitted articles fail to document that the performance of [REDACTED] and his group is culturally unique. The submitted articles reflect [REDACTED] career achievements as a pop star, recording artist, and touring artist, and his increasing international fanbase and celebrity in the Middle East and beyond. However, none of the submitted articles mentions culturally unique aspects of the beneficiaries' performance. The articles indicate that [REDACTED] sings primarily pop songs written in Arabic and strives to have his own unique sound and musical style. The petitioner has not submitted evidence to satisfy the plain language of the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(B).

The nature of the regulatory definition of “culturally unique” requires USCIS to make a case-by-case factual determination based on the agency’s expertise and discretion. The petitioner bears the burden of establishing by a preponderance of the evidence that the beneficiaries’ artistic expression is in fact unique to an identifiable group of persons with a distinct culture. To determine whether the beneficiaries’ artistic expression is unique, the USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the entire record. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The petition was properly denied as the petitioner has not submitted relevant, probative evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The appeal will be dismissed.

C. Evidence that all of the beneficiaries' performances or presentations will be culturally unique events

As discussed above, the evidence establishes that the petitioner has arranged for the beneficiaries to play eight concerts at various cities throughout the United States. The director concluded that "the commercial music festivals or concerts at which the beneficiary will perform are primarily focused on specific popular music styles such as 'jazz' or 'pop,' or are interdisciplinary referred to as 'international.'" The director concluded that "these are not culturally unique events intended to further the understanding or development of the beneficiary's particular art form," and noted that "venues such as general popular music festivals were not cultural events to further the understanding of the beneficiary's art form."

Upon review, we agree with the director's conclusion that the petitioner failed to establish that the beneficiaries' performances will be culturally unique events. However, the director incorrectly stated that the beneficiaries would be performing at "jazz" or "pop" festivals. Further, the focus of the director's analysis was inappropriately based on the nature, or perceived nature, of the venues at which the beneficiaries would perform, rather than based on a determination as to whether all of the beneficiaries' performances would be culturally unique events.

Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's musical performances or presentations are culturally unique, the beneficiary's performances and presentations will be considered culturally unique events. The petitioner need only establish that the events in which the beneficiary would engage would be limited to performing and presenting in their claimed area of culturally unique skill.

As discussed above, in order to establish that the beneficiaries' performance is culturally unique, the petitioner must submit evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The petitioner has failed to submit evidence to satisfy either criterion and therefore has not established that the beneficiaries' performances will be culturally unique events. Again, the petitioner cannot establish the beneficiaries' eligibility as culturally unique entertainers simply by claiming that they will be performing Lebanese, Arabic or Middle Eastern music that has some unspecified cultural

significance. The petitioner must establish that the instant beneficiaries' performance, and therefore the specific artistic or entertainment events for which their services are sought, are culturally unique.

Based on the foregoing, the petitioner has not established that all of the beneficiaries' performances or will be culturally unique, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). For this additional reason, the appeal will be dismissed.

D. Commercial or Non-Commercial Program

The final basis for denial of the petition was the director's finding that "[t]he petitioner made no prima facie showing that it has a commercial or non-commercial program as required by 8 C.F.R. § 214.2(p)(1)(ii)(C)," and that the petition lacked evidence that the petitioner has a culturally unique program, pursuant to 8 C.F.R. § 214.2(p)(6)(i)(B).

In reaching this conclusion, the director appeared to be concerned with the fact that the petitioner is newly formed and had a bank account showing a "zero" balance. The director stated that the petitioner "avers positively that the performances of the beneficiaries will take place at the address of this nonentity."

On appeal, counsel for the petitioner asserts that the director "incorrectly focused on the financial standing of the Petitioner as opposed to the actual commercial or noncommercial culturally unique program that the Petitioner proposed in its petition." Counsel further objects to the director's reference to the petitioner as a "non-entity." Finally, counsel emphasizes that the petitioner never stated that the beneficiaries would be performing at its own address.

Upon review, counsel's assertions are persuasive, in part. Although the statute and regulations refer to a "commercial or noncommercial program that is culturally unique," the term "program" is not defined and no specific requirements are set forth for the petitioner to establish that such a program exists. Rather, the petitioner is required to submit evidence that "all of the performances or presentations will be culturally unique events." An event is defined as an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement, and can include an entire season of performances. 8 C.F.R. § 214.2(p)(3).

In this case, the petitioner indicates that the events in which the beneficiaries would perform are concerts at eight venues across the United States. The petitioner never indicated that the beneficiaries would be providing services at its own address. Further, while the petitioner was a newly-formed partnership at the time of filing, the petitioner provided ample evidence that it was in fact a bona fide sponsor and promoter of the beneficiaries' United States tour and responsible for making all arrangements for their concerts with the venues. The director's reference to the petitioner as a "non-entity" was inappropriate and will be withdrawn.

Therefore, there is sufficient evidence to establish that the petitioner is in fact sponsoring a commercial program. However, for the reasons discussed above, the petitioner has failed to establish that the commercial program is culturally unique.

IV. Conclusion

In summary, the statute requires that the beneficiaries enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiaries under this section of the Act, the petitioner must submit evidence that all of the beneficiaries' performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3) and 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.