



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 22918081

Date: NOV. 09, 2022

Appeal of Vermont Service Center Decision

Form 1-129, Petition for Nonimmigrant Worker (Athlete, Artist, or Entertainer- P)

The Petitioner, a business engaged in entertainment promotion, seeks to temporarily employ the Beneficiaries as performing artists in a culturally unique program. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). The P-3 classification makes visas available to persons who perform, teach, or coach as artists or entertainers, individually or as part of a group, under a culturally unique program.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiaries possess culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and that all the Beneficiaries' performances or presentations in the United States would be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). In addition, the Director determined that the Petitioner did not submit, as required, a contract or summary of the oral agreement between it and Beneficiaries [redacted] and [redacted] 8 C.F.R. § 214.2(p)(2)(ii)(B).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(P)(iii) of the Act provides for classification of a noncitizen having a foreign residence which he or she has no intention of abandoning who performs individually or as a group and seeks to enter the United States temporarily and solely to participate in a program that is culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) expands on the statute as follows:

- (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 regulation at 8 C.F.R. § 214.2(p)(3) provides, in pertinent part:

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.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) provides 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 person'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 person's or group's skill, or
- (B) Documentation that the performance of the person 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.

Further, pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(ii), all petitions for P classification must 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 beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary 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.

Finally, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.*

II. ANALYSIS

A. Introduction

According to page 4 of the petition and page 26 of the O and P Classifications Supplement, the Petitioner intends to hire the Beneficiaries, [] musicians, singers, and dancers who perform together as the musical group [] for a period of six months to work as “musicians/artists” at “live shows, performances and theater shows” that it describes as “unique and cultural” celebrations of the “Flag Day, music, food culture of []”. The Petitioner indicates the Beneficiaries’ musical genre is [] hip-hop, also referred to in the record as []. The documentation submitted suggests that they perform in the [] language.

At issue is whether the Petitioner included the requisite evidence demonstrating that the Beneficiaries’ performances are culturally unique and whether it established that all the performances or presentations will be culturally unique events. On appeal, the Petitioner submits additional evidence but does not specifically address the regulatory requirements of the classification. For the reasons discussed below, the Petitioner has not met these requirements.

B. Artist or Entertainer in Culturally Unique Program

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the Petitioner show that the Beneficiaries’ performance or art form is culturally unique either through the submission of affidavits, testimonials, and letters, or through published reviews of the Beneficiaries’ work or other published materials. Regardless of which form of evidence is offered, it must establish that the Beneficiaries present, perform, teach, or coach 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.

1. Affidavits, Testimonials, or Letters from Recognized Experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) allows a petitioner to offer affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiary’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 beneficiary’s or group’s skill. We agree with the Director’s determination that the letters in the record do not detail or elaborate in specific, factual terms, what specific skills the Beneficiaries possess and how those skills are associated with a culturally unique or traditional art form.

Here, while the record includes a number of letters claiming that the Beneficiaries’ performances are culturally unique, the letters do not sufficiently explain the cultural uniqueness of the art form. For example, [] director of the [] Association of Indiana, states that the organization is looking forward to having the Beneficiaries’ band “as one of the [] talents” at its [] Music Festival Indiana at the Indiana State Fairgrounds & Event Center. He asserts that the Beneficiaries are “an authentic cultural Group that promotes [] Culture” and “[i]n the [] diaspora and

¹ The record shows that Beneficiary [] the group’s lead singer, has also performed individually as [].

abroad, the group demonstrates dances of tribes such as: aka, [redacted]”² [redacted] of the Universal Medical Group of [redacted] states that the Beneficiaries’ single [redacted] [redacted] was “a global hit that people in the USA diasporas were dancing on Tiktok and YouTube.” [redacted] director of the [redacted] Cultural Arts Center in [redacted] Florida, asserts that band has “unique culture, style of genre music and talents” and had a “mega hit [redacted] that buzzed all over social medias, Tiktok, Youtube, Facebook.”

Within the Petitioner’s response to the Director’s request for evidence (RFE) it provided several additional letters, including a letter from [redacted] the director of [redacted] the cultural supplement of the [redacted] daily newspaper *Le Nouvelliste*. We note that the letter is not accompanied by the required certification from the translator.³ [redacted] describes Beneficiary [redacted] as “an artist evolving in the world of song in [redacted] who made his debut in [redacted] in 2020 “in the world of . . . [redacted] [redacted] and has had “several successful tracks” including [redacted] and [redacted] [redacted], [redacted] senior program director for [redacted] states that “[f]or the past 3 years [Beneficiary [redacted]] has developed into our ambassador for our national music genre, the [redacted].” He asserts that the group’s first single [redacted] has more than a million YouTube views. Further, [redacted] executive director of [redacted] [redacted] in [redacted] states that the group “has an unique talent vocal and traditional dance move” and is dedicated “to educate and teach traditional art.”⁴

These letters, while praising the Beneficiaries’ achievements as performing artists, do not specifically explain why the Beneficiaries’ shows are culturally unique, such that they are “unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.” 8 C.F.R. § 214.2(p)(3) (defining “culturally unique”). The fact that a performance has elements relating to a culture does not necessarily lead to a conclusion that the Beneficiaries’ art form is “culturally unique.” As a matter of discretion, USCIS may accept expert opinion testimony.⁵ USCIS is ultimately responsible for making the final determination regarding a person’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988); *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”); *see also Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 805 (holding that the petitioner bears the burden of establishing by a preponderance of the evidence that the beneficiaries’ artistic expression, while drawing from diverse influences, is unique to an identifiable group of persons with a distinct culture.”)

² The documentation submitted indicates that [redacted] (also referred to in the record as [redacted]) are other genres of modern [redacted] music.

³ Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

⁴ The [redacted] website indicates it is a social service organization that works to protect the rights of women and children.

⁵ Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

In *Skirball Cultural Ctr.*, 25 I&N Dec. at 805-06, we determined that the petitioner’s evidence—including detailed letters from a professor at the University of Southern California and recognized experts in the performing arts, as well as published reviews of the beneficiaries’ work—sufficiently showed that their music “is, first and foremost, Jewish klezmer music that has been uniquely fused with traditional Argentine musical styles.” In contrast, the Petitioner in this case has offered letters that conclude, without sufficient support, that the Beneficiaries’ shows are culturally unique. These letters are insufficient to satisfy the regulatory requirements.

Moreover, the Petitioner has not offered sufficient evidence showing that the authors of the letters, who include a medical doctor, a journalist, a radio personality, and directors of cultural and social service organizations, are “recognized experts” in [redacted] hip-hop or [redacted], the Beneficiaries’ field of the performing arts, as required under 8 C.F.R. § 214.2(p)(6)(ii)(A). Specifically, the letters do not establish the credentials of the authors confirming their status as recognized experts in the relevant field and do not provide the manner in which the authors gained knowledge of the Beneficiaries’ skills.

Further, we acknowledge that within the Petitioner’s initial submission and response to the Director’s RFE it provided two “no objection” labor consultation letters dated 2022 from [redacted] and [redacted] of the American Guild of Musical Artists (AGMA). [redacted] and [redacted] state that the supporting documentation “establishes that [the Beneficiary group] presents a unique performance representative of the cultural heritage and musical traditions of [redacted] and that they “appear to meet the standards of distinction set forth at 8 C.F.R. [§] 214.2[(p)].” While the letters satisfy the Petitioner’s burden to supply 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 U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. § 214.2(p)(7)(i)(D). Regardless, the letters do not constitute a letter from an expert in [redacted] culture attesting to the authenticity of the Beneficiaries’ skills in performing a unique or traditional art form. [redacted] and [redacted] also do not explain how AGMA reached its conclusion based on the evidence submitted with the petition.

Ultimately, the letters submitted characterize the Beneficiaries as performers who enjoy a following in [redacted] and elsewhere. Although the letters generally suggest that there are cultural elements to the Beneficiaries’ performance, the authors have not established their credentials as recognized experts in the Beneficiaries’ field of the performing arts and do not sufficiently detail how the Beneficiaries’ performances are culturally unique to [redacted] as claimed.

Based on the above discussion, the testimonial evidence does not satisfy the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

2. Documentation that the Performance is Culturally Unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) allows the Petitioner to offer documentation that the Beneficiaries’ performance is culturally unique, as exemplified by reviews in newspapers, journals, or other published materials. The Director determined that the Petitioner has not submitted reviews or other published materials documenting that the Beneficiaries’ performance is culturally unique. Upon review of the documents in the record, including those the Petitioner presents on appeal, we agree with the

Director's conclusion that the published materials submitted do not document that the Beneficiaries' performance is culturally unique, as required by 8 C.F.R. § 214.2(p)(6)(ii)(B).

The Petitioner submitted articles that mention the Beneficiaries but do not discuss how their performances are culturally unique. Within its RFE response the Petitioner provided an article from Wikipedia about [redacted] hip-hop that mentions the Beneficiaries under the category "Notable [redacted] group and Artists." The Petitioner also submitted an additional undated article from an unknown source, that states that Beneficiary [redacted] "told the team of Hit Mag Mizik in an exclusive interview" that he will release a new album titled [redacted] and notes he previously released a mixtape in 2019 titled [redacted], and a hit single [redacted]. We note that the article appears to be an English translation but is not accompanied by a copy of the foreign language article or the required certification from the translator. 8 C.F.R. § 103.2(b)(3). In addition, the Petitioner provided a YouTube screenshot of one of the Beneficiaries' videos and an iTunes screenshot showing nine of the band's songs and two of its albums. While those exhibits establish that the Beneficiaries are [redacted] performers who enjoy a growing reputation in their native country and elsewhere, they do not document that the Beneficiaries' performance is an art form culturally unique to [redacted].

On appeal, the Petitioner submits an article that does not mention the Beneficiaries but discusses the 2018 [redacted] Music Festival in [redacted] Florida. However, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary or group and their individual performance of the claimed culturally unique art form. This article does not satisfy the regulation, as it does not mention the performance of the Beneficiaries.

Here, the submitted documents do not specifically explain how the Beneficiaries performances are "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." 8 C.F.R. § 214.2(p)(3) (defining "culturally unique"). Evidence that the Beneficiaries' work incorporates [redacted] cultural elements, without additional corroboration confirming the cultural uniqueness of the work, is insufficient to satisfy the regulatory requirements. Unlike the published material in *Skirball Cultural Center*, 25 I&N Dec. at 803-04, the items in the matter before us do not specify how the skills the Beneficiaries will perform in the United States are culturally unique to [redacted] or another qualifying group. Nothing in *Skirball Cultural Center* suggests that performing in a foreign language is sufficient to establish that a performance is culturally unique. While the Beneficiary group may have a unique musical style of performance, the published materials do not sufficiently corroborate that their performances are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

In sum, the appeal will be dismissed, as the Petitioner has not fulfilled the requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B).

3. Evidence that the Performances or Presentations will be Culturally Unique Events

Assuming that the Petitioner establishes through submission of the required evidence that the Beneficiaries' musical performances or presentations are culturally unique, their performances and presentations will be considered culturally unique events. The Petitioner need only establish that the events in which the Beneficiaries would engage would be limited to performing and presenting in their claimed area of culturally unique skill. The record includes promotional flyers for the Beneficiaries' nine

upcoming performances at event centers, a banquet hall, and a restaurant. While a culturally unique music group could perform at these venues, as previously discussed the Petitioner did not demonstrate that the Beneficiaries' performances are culturally unique. *See* 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Absent evidence that their performances are culturally unique to "a society, class, ethnicity, religion, tribe, or other group of persons," the Petitioner cannot establish that their performances will be "culturally unique" events. Based on the foregoing, the Petitioner has not established that all of the Beneficiaries' performances or presentations in the United States will be culturally unique events, as required by C.F.R. § 214.2(p)(6)(ii)(C).

C. Contract

As stated above, the regulations at 8 C.F.R. § 214.2(p)(2)(ii)(B) require that the Petitioner must submit copies of any written contracts for the Beneficiaries or summaries of any oral agreement under which they will be employed. The Director determined that the Petitioner did not submit any such evidence on behalf of Beneficiaries [] and [] prior to the adjudication of the petition and had therefore not satisfied these evidentiary requirements. A review of the record reveals that the Petitioner's initial submission and response to the Director's RFE did not contain copies of any written contracts for those Beneficiaries, or summaries of any oral agreement under which they will be employed.

On appeal, the Petitioner submits copies of summaries of oral agreements dated April 26, 2022, under which it will employ Beneficiaries [] and [], and its written contract with the petitioning group dated April 19, 2022. However, those materials are dated after the date the petition was filed on February 26, 2022. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied at the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Based on the above discussion in regard to Beneficiaries [] and [] we agree with the Director's determination that the Petitioner did not satisfy the evidentiary requirements set forth in the regulations at 8 C.F.R. §§ 214.2(p)(2)(ii)(B).

III. CONCLUSION

The Petitioner has not established that the performances of the Beneficiaries are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons or that the events where they will perform will be culturally unique. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.