



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

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

In Re: 27013662

Date: May 23, 2023

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, an Indian music school, seeks to temporarily employ the Beneficiary as a performing artist 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 Beneficiary possesses culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B), and that all the Beneficiary's performances or presentations in the United States would be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.

In addition, 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.

Further, 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.

Moreover, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Chawathe*, 25 I&N Dec. at 376. 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 pages 4 and 5 of the petition and page 26 of the O and P Classifications Supplement, the Petitioner intends to hire the Beneficiary, an Indian music arranger and programmer, to work as a "North Indian Classical Music Teacher" for a period of one year.¹ The Petitioner indicates the Beneficiary will "teach different age groups " of students "Indian Classical music, by virtue of various instruments, confidence and essentially how to perform and be the stars of their very own show by excelling in the artistic arena of Indian Classical Music." Within the Petitioner's initial submission, it claims that the Beneficiary's musical genre is Indian Classical Music. It asserts that he has been a music producer and composer for Indian cinema and television who has "recorded hundreds of Jingles' Musical

¹ We note that there is some incongruity regarding the dates of intended employment. According to page 5 of the petition, the Petitioner intends to employ the Beneficiary for one year, but on page 26 of the O and P Classifications Supplement, the Petitioner indicates it seeks to employ him "for an initial period of 2 years."

Production, Singles, Albums, Movie Songs, and background Scores for Movies in Indian Cinema.” At issue is whether the Petitioner included the requisite evidence demonstrating that the Beneficiary’s performances are culturally unique and whether it established that all the performances or presentations will be culturally unique events. On appeal, the Petitioner maintains that the record establishes the authenticity of the Beneficiary’s culturally unique skills and that all his activities on its behalf will be culturally unique. It submits new documentation. For the reasons discussed below, the Petitioner has not met these requirements.

B. Artist or Entertainer in Culturally Unique Program

As discussed, to classify the Beneficiary as a P-3 nonimmigrant, the Petitioner must demonstrate that his art form is culturally unique, as defined under 8 C.F.R. § 214.2(p)(3), and must present supporting documentation, including expert affidavits, testimonials or letters, or reviews in newspapers, journals, or other published materials, listed under 8 C.F.R. § 214.2(p)(6)(ii)(A)-(B). Regardless of which form of evidence is offered, it must establish that the Beneficiary presents, performs, teaches, or coaches 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

As stated, 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. The Petitioner maintains that it has satisfied the requirements under 8 C.F.R. § 214.2(p)(6)(ii)(A) based upon “[the Beneficiary’s] experience of working in the Bollywood Industry for over thirty years, performing live for Gujarat, Punjab, and Maharashtra folk groups, and his knowledge of Indian Classical Music.”

The Petitioner points to letters in the record as supporting evidence that the Beneficiary’s art form is culturally unique. Within its initial submission, the Petitioner explained that “Indian Classical Music is unique to the country of India, and is comprised of different types of instruments and compositions originating from the deep roots of India and unique lyrics and concept of storytelling through music to emote each different song properly.” We agree with the Director’s determination that the letters the Petitioner references do not satisfy the requirements under 8 C.F.R. § 214.2(p)(6)(ii)(A).

The numerous letters contained in the Petitioner’s initial submission describe the Beneficiary’s work in India as a music arranger and programmer for popular music recording artists, Bollywood films, television shows, and advertising campaigns. Although some of the letters claim that the Beneficiary’s performances are culturally unique, the letters do not sufficiently explain the cultural uniqueness of the art form.²

For instance, in her letter, [REDACTED] of the American Guild of Musical Artists (AGMA) states that the supporting documentation “establishes that [the Beneficiary] presents a unique performance

² Although we discuss only a sampling of the submitted letters, we have reviewed and considered each one.

representative of the cultural heritage and musical traditions of India.”³ [redacted] however, does not discuss in detail aspects of the Beneficiary’s music or point to any support to corroborate her conclusory statements that the Beneficiary’s music is culturally unique. Unsubstantiated statements do not constitute relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true. *See Chawathe*, 25 I&N Dec. at 375-76.

Similarly, the other letters in the initial submission, all dated between 2007 and 2009, do not confirm the Beneficiary’s music is culturally unique. [redacted] a Canadian musician, states the Beneficiary “has provided his services to me for the production of my own 4 audio CD albums in the last 7 years.” He describes the Beneficiary as “extraordinarily talented” and having “a lot of knowledge of the western music.” [redacted] a music director and singer, states that the Beneficiary “has done many Hindi . . . and Bhojpuri film songs” and worked on a “Hindi musical pop album.”

[redacted] a drama director, indicates the Beneficiary has worked as a music arranger and programmer on six of his “Gujrati drama[s].” [redacted] a music director, composer, and singer, states that the Beneficiary worked as a music programmer and arranger and provided the “background music score” for the films [redacted] [redacted] a music director and singer, provides that the Beneficiary worked with him on Hindi pop songs, Gujarati poetry and plays, and a Hindi devotional album. [redacted] a music director, describes the Beneficiary as “a pioneer in the field of Bollywood music programming and arrangement.”

Within its response to the Director’s request for evidence, the Petitioner submitted additional testimonial letters, including from [redacted] of [redacted] recording studio, who states that the Beneficiary’s “knowledge of various Indian instruments makes him a versatile musician and a conductor of this culturally unique art form” He claims that the Beneficiary “has worked with artists of all levels and instruments like Voice, Sarad, Sitar, Sarangi, Flute, Sur Bahar, Violin, Veena, Jal Tarang, Santoor, et al., most of which are unique to Indian Classical Music.” He states that the Beneficiary’s “thorough knowledge of Indian Classical Music and his experience as a Music Director and a Music Producer make him a culturally unique Artist.”

[redacted] a music director and composer for films, television, and theater, provides that the Beneficiary’s “uniqueness as a musician lies in his ability to understand the unique cultural nuances and subtleness of the Northern Indian Classical Music and be able to apply that knowledge in any form of music and express himself to most genres in the world.” [redacted] trustee of [redacted] [redacted] a religious organization, states that the Beneficiary is “a knowledgeable musician with a good understanding of and strong command over Indian Classical and Folk Music, culturally unique art forms.”

The aforementioned letters are insufficient to confirm that the Beneficiary’s musical work – which, according to the letters’ authors, is in different musical genres, including popular Gujarati, Bhojpuri, and Hindi film music (Indi-pop music), Indian Classical Music, and Western music – is culturally unique.

³ While the letter satisfies 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 USCIS. *See* 8 C.F.R. § 214.2(p)(7)(i)(D). Regardless, the letter does not constitute a letter from an expert in Indian culture attesting to the authenticity of the Beneficiary’s skills in performing a unique or traditional art form.

See 8 C.F.R. § 214.2(p)(3). The testimonial evidence does not demonstrate that such performing and musical traits are unique to India. The Petitioner has not established, through its supporting letters, that these aspects of the Beneficiary's work render his art form "unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." See *id.*

The fact that a performance has elements relating to a culture does not necessarily lead to a conclusion that the Beneficiary's art form is "culturally unique." As a matter of discretion, U.S. Citizenship and Immigration Services (USCIS) may accept expert opinion testimony.⁴ 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.)

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 [redacted] 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 corroboration or explanation, that the Beneficiary's work – which is in several different musical genres – is unique to India. These letters are insufficient to demonstrate that the Beneficiary is 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," as required under 8 C.F.R. § 214.2(p)(6)(i)(A).

Further, the above letter from [redacted] and a letter from [redacted] a music producer, provide an identical assessment of the Beneficiary's reputation, stating: "[The Beneficiary's] other qualities include a very calm and cheerful disposition and wisdom far beyond his years [The Beneficiary's] civic sense, sense of social wellbeing and moderate beliefs make him an extremely pragmatic individual and a value [sic] addition to every society."

The identical contents in the letters of [redacted] call into question whether the letters were prepared by the authors, and therefore diminish their probative value in establishing that the Beneficiary qualifies for the requested classification. See *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010) (affirming an adverse credibility finding based, in part, on letters from different witnesses that contain similar language, grammar, and spelling errors); *Mel Chai Ye v. United States*

⁴ 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).

Dep't of Justice, 489 F.3d 517, 519 (2d Cir. 2007) (stating that an adverse credibility finding may be based on nearly identical language in separate written affidavits, which an applicant contends are written by two different people on his or her behalf).

Moreover, the Petitioner has not offered sufficient evidence showing that the authors of the letters are “recognized experts” in Indi-pop, Indian Classical, or Western music, the multiple musical genres in which the Beneficiary performs, as required under 8 C.F.R. § 214.2(p)(6)(ii)(A) (requiring letters from “recognized experts [who are qualified to] attest[] to the authenticity of the [beneficiary’s] skills in performing, presenting, coaching, or teaching the unique or traditional art form”). The authors discussed their own credentials, but the Petitioner did not submit evidence to establish that the authors, who include musicians, music directors, composers, singers, and the director of a religious organization, are “recognized experts” in the Beneficiary’s field of the performing arts, as required by the plain language of the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The Petitioner has not provided the authors’ credentials that confirm their status as recognized experts on the multiple musical genres in which the Beneficiary performs. Although the letters generally suggest that there are cultural elements to the Beneficiary’s music, the authors have not established their credentials as recognized experts in the Beneficiary’s field of the performing arts and do not sufficiently detail how the Beneficiary’s performances are culturally unique to India, as claimed. Based on these reasons, the Petitioner has not shown, by a preponderance of the evidence, that the Beneficiary’s art form is culturally unique, because it has not satisfied the requirements under 8 C.F.R. § 214.2(p)(6)(ii)(A).

On appeal, the Petitioner provides new documentation, including recommendation letters from [redacted] a tabla player with the [redacted] School of Music, [redacted] a tabla player and founder of the [redacted] and several pages of the forthcoming book [redacted] which the Petitioner states it will use to teach students Indian Classical Music. We will not consider new eligibility claims or evidence for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).⁵

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 Beneficiary’s 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 Beneficiary’s performance is culturally unique. Upon review,

⁵ Here, the Director afforded the Petitioner an opportunity to present additional evidence through the issuance of a request for evidence.

the record does not contain evidence that could, in the alternative, satisfy the requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B).

The Petitioner submitted several articles that generally discuss Indian Classical Music, North Indian Classical Music, and Hindustani classical music, from Wikipedia and the websites Raag-hindustani.com, Frontiersin.org, and Aliakbarcollege.org. 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 documentation does not satisfy the regulation, as it does not mention the Beneficiary's performance.

Therefore, the Petitioner has not submitted evidence to satisfy the evidentiary 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 the Petitioner establishes through submission of the required evidence that the Beneficiary's musical performances or presentations are culturally unique, his 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 his claimed area of culturally unique skill. The record includes a proposed schedule for the Beneficiary's instructional services at the petitioning school, and a promotional flyer and press releases for proposed presentations at event centers and a municipal performance plaza.

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

III. CONCLUSION

The Petitioner has not established that the Beneficiary's performances are unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons or that the events where he 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.