



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

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

In Re: 23202586

Date: NOV. 29, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner 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).

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.

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 26 of the O and P Classifications Supplement, the Petitioner intends to hire the Beneficiary for a period of six weeks to "perform in a concert by singing and interpreting cultural songs" as part of an annual "cultural event for the [redacted] community." The Beneficiary's press book provides he is a [redacted] singer, songwriter, performer, and producer, who he has released the single [redacted] (2014) and the albums [redacted] (2015), [redacted] (2018), and [redacted] (2020). The record shows the Beneficiary has performed as a singer in concerts in [redacted] and [redacted]. The proposed itinerary indicates he will perform on [redacted] 2022, at [redacted] catering hall in [redacted] New York.

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 provides new evidence, as well as evidence previously submitted into the record, and maintains that the record establishes the authenticity of the Beneficiary's culturally unique skills and that all of his activities on behalf of the Petitioner will be culturally unique. 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 Beneficiary's performance or art form is culturally unique either through the submission of affidavits, testimonials, and letters, or through published reviews of the Beneficiary's work or other published materials. Regardless of which form of evidence is offered, it must establish that the Beneficiary will 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. The Director determined that the Petitioner did not document any culturally unique aspects of the Beneficiary's skills or performances. Upon review, the evidence of record supports the Director's conclusion that the letters submitted in support of the petition do not establish the Beneficiary's skills 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).

Here, while the record includes several letters claiming that the Beneficiary's performances are culturally unique, the letters do not demonstrate that the authors are recognized experts in the relevant field, and detail or elaborate in specific, factual terms, what specific skills the Beneficiary possesses and how those skills are associated with a culturally unique or traditional art form. For example, within its initial submission, the Petitioner, a [redacted] cultural organization, provided an unsigned support letter from its president stating that it has invited the Beneficiary "to celebrate [redacted] festival," an annual event which "honors the willingness of Abraham to sacrifice his son Ismael as an act of obedience to God's command." The Petitioner provides that [redacted] is "one of the biggest festivals of the [redacted] community," which includes such activities as singing, slaughtering of a ram, visiting neighbors, and hosting a performance called [redacted] given in white garments and "honoring the presence of well-known musician[s]" invited to the event. We note that this letter is unsigned and, therefore, has limited evidentiary value. Nonetheless, the letter does not suggest or describe with any specificity the cultural or traditional elements of the Beneficiary's performance at the [redacted] festival.

Within its response to the Director's request for evidence, the Petitioner submitted an additional letter, signed by its president, who indicates that the Beneficiary's will be required to "lead the [redacted] as an artist composer to interpret, sing and lead dance steps that everyone must follow during the festivity" and "fulfil traditional requirement that constitute of bringing 10 pieces of cola nut wrapped in a paper to each leader of [redacted] also called [redacted] community here in New York as of honor and respect to them." The Beneficiary's proposed itinerary indicates that his presentation of cola nuts to [redacted] leaders and "repetition of dance steps" will occur on several dates preceding his musical performance on [redacted] 2022. The Petitioner's RFE response also included a letter from [redacted] deputy general of the [redacted] Copyright Office [redacted] who states that the Beneficiary is registered with [redacted] as a composer, and that "he regularly participates in various artistic and cultural events organized in the Republic of [redacted] and abroad."

The above letters, while suggesting that the Beneficiary has achieved some success as a performing artist, do not specifically explain why the Beneficiary's performances 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 Petitioner must establish that the Beneficiary's performance is a recognized style of performance or artistic expression, methodology or medium that is distinguishable as unique within the field of musical performance. *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.<sup>1</sup> 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 does not identify the culturally unique aspects of the performance that make the Beneficiary's performance distinct to a particular group of persons and recognizable as a unique style of artistic expression.

Moreover, the Petitioner has not offered sufficient evidence showing that the authors of the letters, who include the president of the petitioning [redacted] cultural organization, and the deputy general of the [redacted] Copyright Office, are "recognized experts" in [redacted] music, the Beneficiary's 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 Beneficiary's field of the performing arts and do not provide the manner in which the authors gained knowledge of the Beneficiary's skills.

We acknowledge that within the Petitioner's initial submission it provided a "no objection" labor consultation letter dated 2022 from [redacted] of the [redacted] [redacted] states that the supporting documentation "establishes that [the Beneficiary] presents a unique performance representative of the cultural heritage and musical traditions of [redacted] and that he "appears

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<sup>1</sup> 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).

to meet the standards of distinction set forth at 8 C.F.R. [§] 214.2[(p)].” 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). Nonetheless, the letter does not constitute a letter from an expert in [ ] culture attesting to the authenticity of the Beneficiary’s skills in performing a unique or traditional art form. [ ] [ ] also does not explain how [ ] reached its conclusion based on the evidence submitted with the petition.

Ultimately, the letters submitted characterize the Beneficiary as a performer who enjoys some degree of popularity in [ ] and elsewhere. The Petitioner’s letters and itinerary suggest that there are cultural elements to the Beneficiary’s performance. The authors of the letters submitted 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 [ ] 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 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 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 Beneficiary’s performance is culturally unique, as required by 8 C.F.R. § 214.2(p)(6)(ii)(B).

Within its RFE response the Petitioner provided an article from the website [ ]com dated [ ] 2020 which states that the Beneficiary performed at the [ ] festival, where “the singer and his band performed for over an hour,” and “was supported by dance steps with the young men and women sharing the stage with the audience on the song [ ] (featuring [ ].)” The article contains a photograph of the Beneficiary singing onstage with bandmates playing electric guitar, keyboards, drums, and bongos.

An additional article from an unidentified source dated May 2021 states that the Beneficiary had a successful concert at the [ ] in [ ] and calls him “the current great sensation of [ ] music.” The article is accompanied by a photograph of the Beneficiary singing onstage in front of an audience. While the above exhibits establish that the Beneficiary is a [ ] performer who enjoys a growing reputation in his native country and elsewhere, the articles do not contain references to any culturally unique aspect of the Beneficiary’s performance. Rather, they suggest that the Beneficiary has gained some measure of popularity as a performer in [ ] without specific reference to his performance genre. They do not document that the Beneficiary’s performance is an art form culturally unique to [ ]. Further, the Petitioner’s RFE response included a screenshot of a video posted by AC TV on the Facebook page of the U.S. Embassy [ ], reflecting an interview of him in [ ] 2021. However, the Petitioner did not provide a transcription of the video demonstrating the cultural uniqueness of the Beneficiary’s performance.

Moreover, the Petitioner's RFE response provided articles from websites including [www.taylorfrancis.com](http://www.taylorfrancis.com), [www.chantshistoiremande.free.fr](http://www.chantshistoiremande.free.fr), [www.aconakrylive.com](http://www.aconakrylive.com), and [www.djasso.com](http://www.djasso.com) that do not mention the Beneficiary but discuss the musical movement known as [REDACTED] as a rhythm, folksong, and dance; and the [REDACTED] celebration of [REDACTED]. On appeal, the Petitioner submits an additional article from the website [www.mandebala.net](http://www.mandebala.net) about [REDACTED] describing it as a rhythm, traditional to the [REDACTED] ethnic group of [REDACTED] which accompanies a dance performed at certain festivals and in association with a club, called a [REDACTED]. The article notes that to become a member of such club, one meets with the club leader and brings ten cola nuts as a small token of appreciation. 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. These articles do not satisfy the regulation, as they do not mention the Beneficiary's performance.

Here, the submitted documents do not specifically explain how the Beneficiary's 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 Beneficiary's 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 Beneficiary will perform in the United States are culturally unique to [REDACTED] or another qualifying group. While the Beneficiary may have a unique musical style of performance, the published materials do not sufficiently corroborate that his 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 Beneficiary's musical performances are culturally unique, his performance will be considered a culturally unique event. The Petitioner need only establish that the event in which the Beneficiary would engage would be limited to performing and presenting in his claimed area of culturally unique skill. On appeal, the Petitioner submits a copy of a promotional poster for the Beneficiary's event on [REDACTED] 2022, indicating he will perform with [REDACTED] at [REDACTED] catering hall "[a]t [REDACTED] Taking Place in celebration of [REDACTED]." While a culturally unique music group could perform at that venue, 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 his performances are culturally unique to "a society, class, ethnicity, religion, tribe, or other group of persons," the Petitioner cannot establish that his performance will be a "culturally unique" event. Based on the foregoing, the Petitioner has not shown that the Beneficiary's performance in the United States will be a culturally unique event, 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 and that the event 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.