



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

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

In Re: 26878022

Date: May 25, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a business engaged in event management and promotions, 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). The Director also determined that the Beneficiaries' proposed activities do not fall within the regulatory confines of an "event," as set forth at 8 C.F.R. § 214.2(p)(3).

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)(3) states, in relevant part:

Competition, event or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, and stopovers which are incidental and/or related to the activity. An athletic activity or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

Moreover, 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.

In addition, 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. Interpretation of "Event"

The first issue considered by the Director was whether the performances scheduled according to the Beneficiaries' itinerary can be considered a single "event." At the time of filing, the Petitioner

submitted a contract which included a tour itinerary of 7 performances scheduled between January 28, 2023, and January 13, 2024, with 60-day gaps between performances. In the request for evidence, the Director requested, *inter alia*, that the Petitioner “detail[] or explain [] what the beneficiaries will be doing during the gaps between performances Because there are gaps between each performance, the contract does not establish an event or activity or a series of connected events or activities that would allow for the full validity period requested.”

The Petitioner’s response included a document titled [REDACTED] Beneficiaries, Other Personnel and Scheduling,” which provided specific addresses for the previously submitted performance dates, and stated as follows:

Due to the schedule and commitment of the artists, the dates listed below are the available times that we can confirm them for the performances.

. . . .

The beneficiaries may have to travel out of the country for other commitments and return to the U.S. for the continuation of the performances.

The Director concluded that the Beneficiaries’ performances do not constitute an “event,” because the Petitioner has “not provided a listing of events or activities that are continuous rather than ones with large gaps in between each performance.” For the reasons outlined below, the Director’s determination on this issue will be withdrawn.

The regulations allow for an approval of a P-3 petition for a period of time necessary to complete the event, activity or performance for which the beneficiaries are admitted, not to exceed one year. 8 C.F.R. § 214.2(p)(8)(iii)(C). Here, the Petitioner has identified the Beneficiaries’ “event” as a tour with seven scheduled performances occurring between January 28, 2023, and January 13, 2024. U.S. Citizenship and Immigration Services (USCIS) evaluates the totality of the evidence submitted with regards to the pertinent statute and regulations to determine if the activities on the itinerary are related in such a way that they could be considered one event.

The definition of “competition, event, or performance” at 8 C.F.R. § 214.2(p)(3) indicates that an “entertainment event could include an entire season of performances,” or a “group of related activities.” Here, the evidence indicates that the beneficiary group will be touring over a period of approximately 12 months with 7 separate performances every couple months. We find this scenario, in which separate performances of a lengthy tour have been scheduled throughout the year, to fall within the definition of an “event” as “an entire season of performances” or a “group of related activities.” We can find no statutory or regulatory authority for the Director’s conclusion that traveling outside the United States during a gap or break in a group’s U.S. itinerary would necessarily indicate the end of an “event.”¹

¹ This flexible interpretation of an “event” is supported by the regulations for filing amended P petitions at 8 C.F.R. § 214.2(p)(2)(iv)(D), which states, in pertinent part, that “[a] petitioner may add additional, similar or comparable performance, engagements or competitions during the validity period of the petition without filing an amended petition.” This portion of the regulation would be rendered meaningless if USCIS restricted the dates of approval to those exact dates on which the beneficiary group has a performance scheduled.

For the reasons discussed above, we withdraw the Director's determination on this issue.

B. Artist or Entertainer in Culturally Unique Program

1. Introduction

The next issue considered by the Director was 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 maintains that the record establishes the authenticity of the Beneficiaries' culturally unique skills and that all their activities will be culturally unique. It submits new documentation. For the reasons discussed below, the Petitioner has not met these requirements.

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 16 Beneficiaries, Nigerian gospel singers and musicians, to work as performing artists on [REDACTED] Within the Petitioner's initial submission and response to the request for evidence, it provided its contracts with the Beneficiaries, indicating they "will perform African praise and worship set[s] with a full live band including Keyboards, Piano, Talking Drums, Bass, Trumpets and Bongo Drums" in the Igbo, Yoruba, and Urhobo languages. Its description of the tour also indicates the Beneficiaries "will be performing in traditional Nigerian attires and will feature dance recitals that originated from Western & Eastern parts of Nigeria" in an "event full of singing, prayers and worship."

As discussed, to classify the Beneficiaries as P-3 nonimmigrants, the Petitioner must demonstrate that their 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 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.

2. 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 established the Beneficiaries' "eligibility to perform and interpret their artist expression that is unique to people of Nigeria." We agree with the Director's determination that the letters submitted do not satisfy the requirements under 8 C.F.R. § 214.2(p)(6)(ii)(A).

The letters contained in the Petitioner's initial submission describe several of the Beneficiaries as gospel music singers. Although the authors claim that those Beneficiaries' performances are culturally unique, they do not sufficiently explain the cultural uniqueness of the art form. For instance, in her letter, [REDACTED] [REDACTED] of the American Guild of Musical Artists (AGMA) states that the supporting documentation

“establishes that [the Beneficiaries] present a unique performance representative of the cultural heritage and musical traditions of Nigeria.”² [redacted] however, does not discuss in detail aspects of the Beneficiaries’ music or point to any support to corroborate her conclusory statements that the Beneficiaries’ 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 do not confirm the Beneficiaries’ music is culturally unique. A letter from the head of production of [redacted] a Nigerian media production company, states that Beneficiary [redacted] is a singer, songwriter, and worship leader whose songs [redacted] “have become anthems in many churches and homes.” The author asserts that Beneficiary [redacted] “music, the lyrics, the dialect, the dance routines, and the cultural expressions is unique to the people of Nigeria.”

A letter from the general manager of [redacted] Television indicates that Beneficiary [redacted] is a gospel music singer whose songs [redacted] “have become anthems in many churches and homes.” The author claims that Beneficiary [redacted] “artistic expression includes songs with lyrics in Yoruba, her music chant and dance recitals are culturally unique to the people of Nigeria.”

Within its response to the Director’s request for evidence, the Petitioner submitted additional testimonial letters, including from the CEO of [redacted] FM, who states that Beneficiary [redacted] is a worship minister, whose songs [redacted] and [redacted] minister the gospel through “R&B and Soul genres,” and are composed in English, Ibo, Isoko, Pidgin, and Swahili.

A letter from the CEO of [redacted] Television describes Beneficiary [redacted] as an artist, worshipper, actor, and writer, whose credits include the album [redacted] and the gospel singles [redacted]. An additional letter from the general manager of [redacted] Media Group states that Beneficiary [redacted] is a gospel musician credited with the songs [redacted] and [redacted] whose “artistic expression includes songs with lyrics in Yoruba, his music rendition and dance recitals are culturally unique to the Yoruba people of Nigeria.”

The aforementioned letters are insufficient to confirm that the Beneficiaries’ musical work – which, according to the letters, is in different music genres, including gospel, rhythm and blues, and soul – is culturally unique. *See* 8 C.F.R. § 214.2(p)(3). The testimonial evidence does not demonstrate that such performing and musical traits are unique to Nigeria. The Petitioner has not established, through its supporting letters, that these aspects of the Beneficiaries’ work render their 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 Beneficiaries’ art form is “culturally unique.” As a matter of discretion, USCIS may accept expert

² 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 Nigerian culture attesting to the authenticity of the Beneficiaries’ skills in performing a unique or traditional art form.

opinion testimony.³ 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 of [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 Beneficiaries’ work – which is in several different music genres – is unique to Nigeria. Further, nothing in *Skirball Cultural Center* suggests that performing music in a foreign language is sufficient to establish that a performance is culturally unique. These letters are insufficient to demonstrate that the Beneficiaries are 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).

Moreover, as noted in the Director’s decision, the Petitioner has not offered sufficient evidence showing that the authors of the letters, administrative staff of a media production company, a radio station, and television stations, are “recognized experts” in gospel, rhythm and blues, or soul music, the multiple musical genres in which the Beneficiaries perform, 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 [beneficiaries’] skills in performing, presenting, coaching, or teaching the unique or traditional art form”). Although some of the authors may work in the music industry in Nigeria, the Petitioner has not provided their credentials that confirm their status as recognized experts on the multiple musical genres in which the Beneficiaries perform.

In sum, the letters generally suggest that there are cultural elements to the Beneficiaries’ music, but 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 Nigeria, as claimed. Based on these reasons, the Petitioner has not shown, by a preponderance of the evidence, that the Beneficiaries’ art form is culturally unique, because it has not satisfied the requirements under 8 C.F.R. § 214.2(p)(6)(ii)(A).

³ 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).

On appeal, the Petitioner provides new documentation, including additional testimonial letters which it asserts “speak[] to cultural uniqueness of all the beneficiaries of the petition.” 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 Obaighbena*, 19 I&N Dec. 533 (BIA 1988).⁴

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

3. 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 Petitioner has not submitted reviews or other published materials documenting that the Beneficiaries’ performance is culturally unique.

The Petitioner submitted articles that mention several of the Beneficiaries but do not discuss how their performances are culturally unique. An article from the website chapeloftransfiguration.org about Beneficiary [redacted] states that her three albums, [redacted] “enjoyed lavish airplay” in Nigeria, West Africa, the United Kingdom, and the United States. It explains that she calls her genre “Contemporary African.” An article from Allbaze.com about Beneficiary [redacted] indicates that he is a minister, worshipper, songwriter, music director, singer, and instrumentalist, known for his gospel hit singles [redacted]
[redacted]

The above-referenced articles, however, do not offer specific details as to how the Beneficiaries’ performances are culturally unique. 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 Nigeria or another qualifying group. While the Beneficiaries may have a unique sound, 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.

On appeal, the Petitioner provides new documentation, including additional articles about the Beneficiaries, which it asserts “establishes that each of them is an artist to further support their eligibility to perform and interpret their artistic expression that is unique to people of Nigeria.” As stated, we will not consider new eligibility claims or evidence for the first time on appeal. *See Soriano*, 19 I&N Dec. at 766; *see also Obaighbena*, 19 I&N Dec. at 533.

⁴ Here, the Director afforded the Petitioner an opportunity to present additional evidence through the issuance of a request for evidence.

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).

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

Assuming 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 a proposed schedule for the Beneficiaries' performances at churches throughout the United States.

While a culturally unique music performance could take place 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 the Beneficiaries' 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 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).

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.