

February 2, 2019

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
Laguna Niguel, CA 92607-0590



U.S. Citizenship
and Immigration
Services



WAC1905850462

EXITHEATRE
c/o RICHARD LIVINGSTON
156 EDDY ST
SAN FRANCISCO, CA 94102

Form I-129, Petition for a Nonimmigrant Worker

DECISION

On November 29, 2018, you, EXITHEATRE (petitioner), filed a Petition for a Nonimmigrant Worker (Form I-129) with U.S. Citizenship and Immigration Services (USCIS), seeking P-3 nonimmigrant classification for Power Productions.

The Immigration and Nationality Act (INA) § 101(a)(15)(P)(iii) 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 such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique . . .

USCIS reviewed the initial record of evidence for eligibility in accordance with the INA and Title 8, Code of Federal Regulations (8 CFR) and could not determine whether you had established eligibility for the benefit sought. Accordingly, USCIS issued a Request for Evidence (RFE) and received your response.

After careful review and consideration of the entire record, based on a preponderance of the evidence, the petition will be denied for the reason(s) discussed below.

Culturally Unique Skills or Performances

The issue is whether you have provided sufficient evidence to establish a culturally unique style of artistic expression, methodology, or medium as contemplated by the regulations for P-3 visa classification.

Pursuant to 8 CFR § 214.2(p)(6)(i)(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.

8 CFR § 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.

8 CFR § 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 the 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

The evidence you submitted is insufficient for the following reasons:

In its RFE, USCIS informed you of the following;

The evidence you submitted is insufficient. You provided experts' attestations and reviews to satisfy this requirement. The attestations primarily discussed one of the beneficiaries' (Paul Powers) creative works, storytelling skills, and works as a writer, producer, and actor. However, the testimonials did not discuss the cultural uniqueness of the beneficiaries' performance. Additionally, the authors did not provide sufficient details to establish their credentials as recognized experts and the basis of their knowledge's of the beneficiaries' skills. Finally, although the reviews discussed the play "Crippled", the articles did not indicate the cultural uniqueness of the beneficiaries' performance.

In response, to the RFE, you provided additional testimonials and an article to satisfy this requirement.

The letter from Elizabeth Sweeney states in part:

"Power Production's Crippled is the only major disability arts theater production to come from Newfoundland, Canada and as such the Council (Canada Council for the Arts) views this production culturally unique- we are unaware of any other theater production to bring the same cultural perceptiveness presented in this work, to the stage"

The letter from Dr. Kirsty Johnston states in part:

"As a disability performance scholar, I can attest to the unique and valuable cultural perspective that "Power Production offer to its audiences."

...

" Theater in particular must answer for its long history of routinely relying on

disabled figures and narratives (Sophocles' blind Oedipus, Shakespeare's "deform'd unfinished" Richard III, Tennessee William's limping Laura Wingfield) to engender pity or fear while keeping actual disabled people from accessing the stage to tell their own stories. Power Productions' Crippled challenges this ableism directly by privileging the artistic voice and perspective of a multi-talented disabled theater artist, Powers himself"

The letter from Ryan Kane states in part that Actors Equity :

" recognize that their (Power Production) work is indigenous to Canada, and is in fact culturally unique"

Catherine Kudlick letter states in part:

"By performing "Crippled" in the Bay Area, Power Productions will be demonstrating all of the important hallmarks, not only of Disability Theater, but of the potential of all disabled persons working in the arts to gain visibility, recognition, and professional touring and production support just as their able-bodied peers do"

"I cannot stress enough how important and meaningful it will be to welcome this unique company to San Francisco"

The letter from Sarah Gorton Stanley states in part:"Power production continues to create works to that have reach, and their production of "Crippled" is an excellent example of this". The play shines a light on the unique lived experience and cultural impacts of the disability, and fosters a profound respect and understanding for what it is to live with the social and physical barriers that disability entails"

The letter from Jillian Kelley states in part:

"Crippled is only one example of Paul's expert storytelling, but one that rings true with his own unique personal lived experience of disability. The production is a catalyst for a deepened understanding of the social and physical barriers that accompany living with disability, and highlights the expert skills of the company in communicating, sharing, moving, through the world and adapting to able-bodied society".

The letter of Emily Christy states in part:

" The expertise of Power Productions is fully integrated in their production of "Crippled". This award winning play fully showcase the unique life experiences of someone who lives with a disability including how this population sector lives in our overall society. The show also demonstrates the unique movements and physical adaptability of a person with a physical disability in life and on the physical stage"

The letter from Debbie Ryan states in part:

"Power Productions and its performance of "Crippled" also demonstrates how

other companies and creators can better produce and present works by making accessible supports part of a production model-including incorporation of audio description, ASL interpretation, relaxed performances and audience space for mobility devices".

The letter from John Sowie states in part:

"Crippled" can certainly be labeled as culturally unique, since one of the performers is in this case also the writer, recording his own experiences, this is a special opportunity for our audience to hear a diverse viewpoint directly from the source, amore powerful experience than would be possible in a presentation of the same material by another set of actors".

From these letters, USCIS is unable to establish that the beneficiaries have culturally unique skills. Although the authors of these letters hold an enthusiastic and positive opinion of beneficiaries and the beneficiaries' production, these letters are insufficient. The authors of these letters do not identify, describe in specific and factual terms, the art form that the beneficiaries will utilize in their production. Further, the authors have provided no indication that the beneficiaries possess skills 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. Further, the consultation from the Actor's Equity attesting to the cultural uniqueness of the beneficiaries' performance is insufficient because consultations are advisory in nature only and are not binding on USCIS .

Additionally, the letters from Ryan Hanley, Catherine Kudlick, Sarah Gaston, Emily Christy, Debbie Ryan, and John Snowle are insufficient because they did not provide details of the basis of their knowledge of the beneficiaries' performance. The letters from Elizabeth Sweeney and Jillian Keeley are also insufficient because although they attest that they met one of the beneficiaries, Paul Powers, they did not state that the basis of their knowledge of the performance itself. Further, while it appears that they may have experience in the field of music, arts, disability, among other things, you have not submitted sufficient probative evidence to establish that they are recognized experts in a culturally unique art form.

Finally, the article from the telegraph is insufficient. The article provided is on and about one of the beneficiaries', Paul Powers and not about the play, "Crippled", nor the article indicated that the performance is considered culturally unique.

Culturally Unique Events

The issue is whether you have established that all the performances will be culturally unique events.

Pursuant to 8 CFR § 214.2(p)(6)(i)(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.

8 CFR § 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.

8 CFR § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

(C) Evidence that all of the performances or presentations will be culturally unique events.

In its RFE, USCIS informed you of the following:

The evidence you submitted is insufficient. The contract, electric correspondences and itinerary you provided is insufficient because it did not provide any details to demonstrate that all of the performances or presentations will be culturally unique events.

In response, you provided letters from John Sowle and Christina Augello. The letters state that the beneficiaries' will be performing for events in their cities or localities. However, you did not provide supporting corroborating evidence such as flyers, detailed itinerary, and contract demonstrating that all the performances will be culturally unique events and the letters themselves do not indicate that all the all the performances will be culturally unique events.

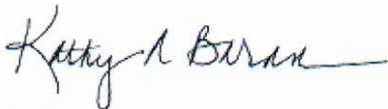
The burden of proof to establish eligibility for the benefit request rests with you. Here, that burden has not been met.

Consequently, the petition is denied for the above stated reason.

If you disagree with this decision, you may appeal to the Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) within 30 days (33 days if by mail) of the date of this decision. Alternatively, you may use Form I-290B to submit a motion to reopen or reconsider. For the latest information on filing location, fee, and other requirements, please review the Form I-290B instructions at <http://www.uscis.gov/forms>, call our USCIS Contact Center at 1-800-375-5283, or visit your local USCIS office.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at <http://www.sba.gov/ombudsman> or phone 202-205-2417 or fax 202-481-5719.

Sincerely,



Kathy A. Baran
Director, California Service Center