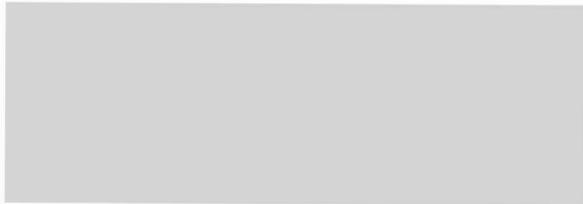




U.S. Citizenship  
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Services

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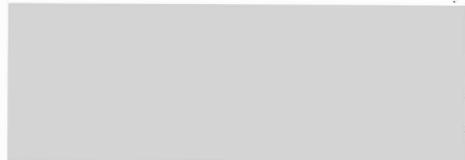


DATE: **APR 15 2015** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer coming to the United States to perform under a culturally unique program. The petitioner, a mixed martial arts academy, seeks to employ the beneficiary as a Brazilian Jiu Jitsu Instructor for a period of one year.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary performs as an artist or entertainer and seeks to enter the United States to perform, teach or coach as a culturally unique artist or entertainer at a culturally unique event or events.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner requests approval of the petition based on new documentation.

Upon review, the petitioner has not established that the beneficiary is a culturally unique artist or entertainer or that he is coming to the United States to participate in an event or events which will further the understanding or development of a culturally unique art form. The record establishes that the beneficiary is neither an artist nor an entertainer, but that he is an athlete, and as such, his proposed activities do not fall within the plain language of the statute at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts."

### I. The Law

Section 101(a)(15)(P)(iii) of the Act, 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 a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

The regulation at 8 C.F.R. § 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.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall 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 alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) 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.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

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

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines “arts” as follows:

*Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

## II. Analysis

### A. Factual Background

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 20, 2014. In the initial cover letter submitted in support of the petition, the petitioner stated that the beneficiary will “will be teaching the martial arts of Brazilian Jiu-Jitsu [(BJJ)] in the [petitioning] company’s facility and will participate in several [BJJ] events performing and coaching the BJJ students, always representing the petitioner and according to the petitioner’s guidance.” According to Internet materials the petitioner submitted in response to the director’s request for evidence (“RFE”) and on appeal, members of the [redacted] developed and popularized BJJ based on Japanese martial arts including Jiu Jitsu and Judo. The materials further state that “nearly all [mixed martial arts] fighters train in Brazilian Jiu Jitsu due to the success that past practitioners have had in the sport.” The petitioner submitted a copy of its employment agreement with the beneficiary, which the parties signed on January 29, 2014. The contract describes the scope of the proposed work as follows:

#### SERVICES TO BE PERFORMED

1. Performance:

Coach will be responsible for teaching and coaching the art form of Brazilian Jiu-Jitsu according to the rules and techniques pertaining to the art and will be giving all necessary equipment and conditions to perform in the academy and in special events.

2. BJJ instructor/coach will be teaching and coaching the art form of Brazilian Jiu-Jitsu at our facility . . .

3. BJJ instructor/coach will participate in BJJ events and competition selected by the company and according to our program.

The petitioner provided a class schedule for its [redacted] Texas location where the beneficiary will work as an instructor, indicating that the beneficiary would teach Jiu Jitsu classes. The petitioner also provided an itinerary covering the period from February 22, 2014 to December 2014, which listed 19 BJJ championship competitions in the United States, Brazil and Europe, all of which show one of two recognized organizations which govern the sport as the sponsors, the [redacted]

[redacted] The record also reflects that the [redacted] officially represents the sport of BJJ in the United States.

In response to the director’s RFE dated March 7, 2014, the petitioner further asserted that “[the beneficiary] will also be performing in events such [as] seminars and conferences, demonstrating the unique techniques of the art which was developed in Brazil and unique to Brazil,” and that he “also will

do presentations for the public.” However, the submitted itinerary did not include any such artistic events or presentations.

The petitioner’s cover letter in support of the petition describes BJJ as “a form of martial art that was developed in Brazil in the early 20th century” and is “a cultural Brazilian martial art form that incorporates the combination of knowledge, coordination, timing, sensitivity, precise movements, mental attributes and advanced strategy.” Additionally, the petitioner explains as follows:

Brazilian Jiu-Jitsu is a historical and cultural art that emphasizes intelligence in martial arts and physical conditioning. It can also be considered a combat sport that focus [sic] on grappling and especially ground fighting with the goal of gaining a dominant position. Brazilian Jiu Jitsu promotes the concept that a smaller, weaker person using leverage and ‘proper techniques’ can successfully defend against a bigger, stronger assailant. The art of BJJ can be used for self-defense, sport grappling tournaments . . . and mixed martial arts (MMA) competitions.

The petitioner further explains as follows:

Brazilian Jiu-Jitsu is a style of art which was developed in Brazil around 1916 by a Brazilian citizen. The art is part of the Brazilian culture. There are several differences between the BJJ and the other martial arts among them: BJJ was developed in Brazil and not in Japan; BJJ has more sophisticated ground fighting and submission techniques than the others. . . . Those techniques are so distinctive that [sic] made the BJJ martial art to be attached to a national identity.

As additional evidence the petitioner submitted two undated letters from [redacted] technical director of the [redacted] Mr. [redacted] states, in one of the letters, that the main goal of [redacted] is to “organize and regulate the sport on an international level.” He explains that [redacted] officially represents the sport of BJJ in the United States, and has developed the official competition rules of BJJ, working in partnership with the [redacted] and the [redacted] In the other letter, Mr. [redacted] uses language almost identical to the letter from the petitioner in describing BJJ as “a cultural Brazilian martial art form that incorporates the combination of knowledge, coordination, timing, sensitivity, precise movements, mental attributes and advanced strategy,” “a historical and cultural art that emphasizes intelligence in martial arts and physical conditioning,” and as promoting “the principle that a smaller, weaker person using leverage and ‘unique proper techniques’ can successfully defend against a bigger, stronger assailant.”

In a response to the director’s RFE, the petitioner submitted an advisory opinion from [redacted], National Coach of the [redacted] Head Coach of [redacted] and a BJJ fighter and coach. In phrases nearly identical to those of the petitioner and Mr. [redacted] Mr. [redacted] describes BJJ as “a cultural Brazilian martial art form that incorporates the combination of knowledge, coordination, timing, sensitivity, precise movements, mental attributes and advanced strategy.” He further describes BJJ as “a historical and cultural art that emphasizes intelligence in martial arts and physical conditioning. It can also be considered a combat sport that focus[es] on grappling and especially ground fighting with the goal of gaining a dominant position.” Mr. [redacted] further describes

BJJ as promoting the principle “that a smaller, weaker person using leverage and ‘proper techniques’ can successfully defend against a bigger, stronger assailant.”

With respect to the beneficiary’s background and qualifications, the petitioner stated:

[The beneficiary] is a 3rd degree Brazilian Jiu Jitsu Black Belt and holds innumerable titles as a coach for many renowned Brazilian Jiu Jitsu athletes. [The beneficiary] has over 20 years [of] experience in practicing and teaching Brazilian Jiu Jitsu . . . [The beneficiary’s] presence in the United States as a Brazilian Jiu-Jitsu instructor and coach has **the effect of raising the cultural awareness of this unique ethnic art in the country.**

(Emphasis in original.) The petitioner submitted evidence that in [redacted] in Brazil, the beneficiary achieved the rank of Black Belt Third Degree, “according to the rules and regulations established by the [redacted]

The petitioner also submitted a letter dated August 26, 2013, from [redacted] Vice President of the [redacted] stating that the beneficiary was an “athlete and teacher 2 degree black belt . . . recorded in this entity since [redacted].” Mr. [redacted] also states that the beneficiary is “responsible for the Association of Academies [redacted] with branches in Brazil . . . and other affiliates broad.” Mr. [redacted] further provides the names of several “renowned athletes in international Jiu Jitsu competitions” for whom the beneficiary is “responsible.”

Based on the information provided, it is evident that the petitioner operates as a martial arts school specializing in instructional programs. The beneficiary has been formally trained in the martial art of BJJ since at least 2002.

#### B. Artist or Entertainer

The director concluded that the beneficiary is not seeking solely to perform, teach, or coach as a culturally unique artist or entertainer under a commercial or noncommercial program that is culturally unique, pursuant to sections 101(a)(15)(P)(iii)(I) and (II) of the Act. Section 101(a)(15)(P)(iii)(I) of the Act provides P-3 classification to beneficiaries who perform as artists or entertainers, individually or as part of a group, or as an integral part of the performance of such a group. The term “arts” includes “fields of creative activity or endeavor” and includes, but is not limited to, fine arts, visual arts, and performing arts. See 8 C.F.R. § 214.2(p)(3).

Therefore, it is necessary to determine whether BJJ is a “creative activity or endeavor” such that its practitioners could be considered “artists” according to the regulatory definition of arts. The petitioner has emphasized that BJJ is “a unique cultural and traditional form of a martial ‘arts’” and refers to BJJ as an “art form.” The petitioner did not further elaborate as to how the petitioner’s school is dedicated to the “arts” or how the beneficiary’s services as a coach or instructor are artistic, rather than athletic, in nature, given the context of the terms and conditions of his employment. The colloquial use of the word “art” or “arts” to describe Brazilian Jiu Jitsu and all martial arts does not demonstrate that its self-defense techniques and athletic competitions are a creative activity or endeavor such that they meet the regulatory definition of art. Where, as here, the regulation expressly defines arts, it is that definition that

is determinative, rather than the dictionary definitions of “artist,” “entertain,” and “entertainment” or a list of synonyms for “art” on which the petitioner relies.

On appeal, the petitioner also relies on the dictionary definition of “martial arts,” which defines martial arts as “any of several arts of combat and self-defense that are widely practiced as sport” and notes an emphasis on the practitioner’s mental and spiritual state. The petitioner simply quotes this definition as determinative without explanation. Accordingly, the petitioner has not explained why the colloquial use of the phrase “arts of combat” falls under the regulatory definition of art such that it is a creative activity or endeavor, or why the emphasis on a practitioner’s mental and spiritual state is relevant to the issue of whether BJJ is an art or sport.

The record establishes that the petitioner’s school teaches an authentic BJJ style of martial arts, but the petitioner has not explained or demonstrated why the beneficiary, who apparently will spend the majority of his time coaching and instructing the petitioner’s students, should be deemed an “artist or entertainer” for purposes of this classification. According to the evidence submitted, BJJ is a sport, which two recognized organizations, the IBJJF and the BJJC, regulate, and which the USBJJF represents in the United States. The petitioner acknowledges that BJJ “can also be considered a combat sport,” without providing concrete examples where BJJ is considered an art.

Therefore, while BJJ is a style of martial “arts,” it has not been shown to be strictly a “field of creative activity or endeavor.” 8 C.F.R. § 214(p)(3) (definition of arts). BJJ is a sport whose practitioners are recognized as athletes. In the appellate brief, the petitioner emphasizes that students of its BJJ classes “will learn the history behind [BJJ] and its founders and some traditional Brazilian Portuguese terminology unique for the sport,” and that it will “incorporate elements of Brazilian culture into every class,” as asserted on its website. However, the evidence of record also establishes that the beneficiary is coming to the United States, in part, to coach students and athletes in an athletic discipline and to compete in and judge an athletic discipline. The materials from [redacted] that the petitioner submits on appeal provide that there are three categories of BJJ, self-defense, free fighting competition, and sport grappling. All three categories are sports and these materials do not suggest there is a separate category where practitioners perform BJJ as a performing or other type of art. Moreover, it does not appear that any of the events described in the itinerary will require the beneficiary’s services as a performer or entertainer. Even if some of the described events were to require the beneficiary’s services as a performer or entertainer, it is evident that he will not be providing services *solely* as an artist, performer or entertainer, as required by the plain language of the statute and regulations. As such, the beneficiary does not meet the requirements for classification as a P-3 artist or entertainer, and the petition is not approvable for this reason alone.

### C. Culturally Unique Program

The petitioner also did not meet the evidentiary requirements for a petition involving a culturally unique program, as set forth at 8 C.F.R. § 214.2(p)(6)(ii). Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary’s performance or art form is culturally unique through 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 submitted, the evidence 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.

In the RFE, the director requested both forms of evidence, as well as evidence that the beneficiary is coming to the United States to participate in a cultural event or events that will further the understanding and development of his art form. The director also requested that the petitioner provide a more detailed description of the beneficiary's proposed duties. The director further noted that the beneficiary would be providing instruction in the beneficiary's school as well as competing in tournaments and competitions. The director requested additional evidence to establish that the beneficiary, in his role as instructor, would be participating in cultural events that will further the understanding or development of his art form. We will discuss the petitioner's evidence below.

*1. Affidavits, testimonials or letters from recognized experts*

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) allows the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien'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 alien's or group's skill.

The petitioner initially submitted, as evidence of the authenticity of his culturally unique skills, a certificate showing that the beneficiary has achieved the rank of Black Belt, 3rd degree. The petitioner also submitted the previous letters of [REDACTED]. In one of his letters, Mr. [REDACTED] states that the beneficiary is an active instructor of BJJ, and provides a list of some of the academies in Brazil that the beneficiary represents as a head instructor. Mr. [REDACTED] states that the beneficiary is "responsible for the Association of Academies [REDACTED] with branches in Brazil . . . and other affiliates broad," and he provides the names of several "renowned athletes in international Jiu Jitsu competitions" for whom the beneficiary is "responsible."

In response to the director's RFE, the petitioner also submitted the previous advisory opinion from Mr. [REDACTED], stating that, having "reviewed the portfolio, work and documentation of [the beneficiary]," Mr. [REDACTED] can "confirm that he has a combination of talent, skills and experience that gives him all attributes to teach and coach the unique art form of [BJJ]."

The director denied the petition on June 18, 2014, concluding that the evidence of record did not establish that the beneficiary seeks to enter the United States to perform, teach or coach as a culturally unique artist or entertainer at a culturally unique event or events. The director noted that the submitted letters, while attesting to the authenticity of the beneficiary's skills as a martial arts athlete and teacher, did not attest to the authenticity of the beneficiary's skills in performing, presenting, coaching, or teaching a unique or traditional art form. The director found that the submitted letters are generalized in terms of describing how BJJ and the beneficiary's specific skills in the discipline, qualify as a culturally unique art form. None of the submitted letters attests with any specificity to the unique cultural or traditional elements of the beneficiary's performance of BJJ. On appeal, the petitioner submits a brief and screenshots from its website providing additional information about its school. The petitioner also submits a screenshot of the beneficiary's biography from the website [REDACTED] and information pertaining to the history of BJJ from the website [REDACTED].

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires “letters from recognized experts attesting to the authenticity of the alien’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 alien’s or group’s skill.” As a matter of discretion, USCIS may accept expert opinion testimony.<sup>1</sup> USCIS will, however, reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; 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 (AAO 2012) (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; it is the weight and quality of evidence that establishes whether or not the artistic expression is “culturally unique.”)

Upon review, the letters do not satisfy the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A). They do not state what differentiating skills and qualities they are referring to that the beneficiary possesses or explain the culturally unique nature of the beneficiary’s services as a coach in BJJ. Although [REDACTED] assert that there are cultural elements to BJJ, their assertion that BJJ originated in Brazil does not constitute a description, with any specificity, of the cultural or traditional elements of the beneficiary’s proposed activities. In addition, the petitioner is required to “give the credentials of the expert, including the basis of his or her knowledge of the alien’s or group’s skill,” pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A). Here, the persons providing testimonial evidence have not fully established the basis of their knowledge of the beneficiary’s skill. While Mr. [REDACTED] states that he has “reviewed the portfolio, work and documentation of [the beneficiary],” he does not give the basis of his conclusion that the beneficiary is qualified “to teach and coach the unique art form of [BJJ].” Finally, the near-verbatim repetition of entire sentences in the letters of [REDACTED], [REDACTED] and [REDACTED] is consistent with a common author such that the language in each letter is not the author’s own.

For the foregoing reasons, the expert opinion testimony is lacking in sufficient probative value, as it does not assist USCIS in determining whether the beneficiary is skilled 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. The letters focus on the origin of the style of martial art and

<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).

do not specifically describe any cultural aspect to the beneficiary's performance, much less attest to the cultural authenticity of his performance. While we do not doubt the beneficiary's skills as a martial arts athlete, performer or instructor, we note that none of the letters attests with any specificity to the cultural or traditional elements of the beneficiary's performances or instruction methods, or how the beneficiary's specific form of BJJ martial arts is "culturally unique."

At the time of filing the petition, the petitioner described BJJ as "a unique form of art particular of Brazil." The petitioner further asserted that the beneficiary has been practicing the art of BJJ for more than 20 years, without articulating or defining precisely what is culturally unique about the beneficiary's performance, which the petitioner indicates is an art form. In response to the RFE, the petitioner responded that, "[a]ll of the expert opinion letters . . . are confirming that [BJJ] is a cultural unique art form developed in Brazil and part of the Brazilian culture," yet did not provide sufficient information to allow USCIS to evaluate what, precisely, the beneficiary's culturally unique skills may entail. While the record contains descriptions of the Brazilian techniques, neither the petitioner nor the testimonial evidence attests with any specificity to the cultural or traditional elements of the beneficiary's performance.

In *Matter of Skirball Cultural Center*, we found sufficient scholars' letters explaining in detail how Klezmer music in general is the music of a specific ethnic group of people, and how the Argentine version, which combines Eastern European roots with native Argentine culture, produces a unique Jewish Argentine music. *Id.* at 802-03. The record in the matter before us, however, lacks expert letters that detail the culturally unique aspects of the beneficiary's performance of BJJ, as found in *Matter of Skirball Cultural Center*. In that case, the expert letters affirmed that, while drawing from diverse influences, the beneficiary's music was unique to an identifiable group of persons with a distinct culture. *Matter of Skirball Cultural Center*, 25 I&N Dec. at 803-05.

In addition, on appeal the petitioner's appellate brief emphasizes that the petitioner will "incorporate elements of Brazilian culture into every class," as asserted on its website, and the petitioner submitted additional descriptions of the Brazilian techniques. The assertions in the appellate brief do not explain in detail how BJJ is a martial art unique to a specific ethnic group of a people or nation. While BJJ originated in Brazil, simply establishing that the beneficiary is a skilled and well-qualified BJJ coach and athlete trained in Brazil is not sufficient to demonstrate his eligibility for this classification. Here, the letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

## 2. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials. The record does not contain any evidence that could, in the alternative, satisfy this requirement.

The petitioner submitted published material from the [REDACTED] in the nature of a 2013 law declaring Brazilian Jiu Jitsu “[REDACTED]”

The petitioner also submitted summary translations of the first pages of two articles discussing the law prior to its enactment: a 2010 article published on the website [REDACTED] and a 2013 article published on the website [REDACTED]. The record does not contain the complete foreign language article from [REDACTED]. The regulation at 8 C.P.R. § 103.2(b)(3) states: “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The translations are summary translations rather than representing the whole foreign language document and, therefore do not comply with 8 C.F.R. § 103.2(b)(3), and has significantly diminished probative value. The petitioner also submitted an undated article about BJJ published on the website [REDACTED].

Unlike the published material in *Matter of Skirball Cultural Center*, 25 I&N Dec. at 803-04, none of the documents in the matter before us mention the beneficiary’s performances or specify how the skills the beneficiary will teach in the United States, namely the skills of BJJ, are culturally unique to Brazil. The fact that BJJ has been recognized as having originated in Brazil, and is celebrated and promoted as part of that country’s cultural heritage, does not equate to a finding that all modern BJJ programs continue to offer “culturally unique” activities that fall within the regulatory definition of “arts.” Based on the foregoing, the petitioner has not submitted reviews or other published materials documenting that the beneficiary’s performance is culturally unique.

The petitioner’s broad assertion that BJJ is a martial art culturally unique to Brazil is insufficient absent documentation that satisfies the evidentiary requirements at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The petition may not be approved as 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 all of the performances or presentations will be culturally unique events

The director determined that the beneficiary’s proposed performances or presentations as a BJJ athlete/instructor will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). The evidence of record supports the director’s determination.

First, as discussed above, the petitioner has not submitted adequate evidence to establish that the beneficiary’s performance or presentation is culturally unique as required by 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Absent evidence that BJJ techniques are culturally unique to Brazil, the petitioner cannot establish that classes taught in this subject will be “culturally unique” events.

In addition, the culturally unique aspects of the beneficiary's instruction and coaching responsibilities have not been discussed in the record. As previously noted, although the petitioner indicates that the beneficiary will participate in various cultural events in the community, it did not submit an itinerary or any other information describing the nature of such events. Rather, the petitioner indicated that the primary 'events' in which the beneficiary will participate are daily BJJ classes. The petitioner has not established how a class held at the petitioner's school is a culturally unique event. The petitioner's additional assertion on appeal, that it "incorporates elements of Brazilian culture into every class," is insufficient to establish that the petitioner's martial arts school is a culturally unique arts program. The petitioner has not established how the beneficiary's performances in the United States would be culturally unique to Brazil or Brazilian culture. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

As stated previously, the petitioner cannot establish the beneficiary's eligibility as a culturally unique artist or performer simply by claiming that he will be performing a Brazilian martial arts discipline and establishing that he was trained in the discipline in Brazil. The petitioner must establish that the beneficiary's performances, and the specific artistic or entertainment events for which his services are sought, are in fact unique to a particular country, nation, society, class, ethnicity, religion, tribe or identifiable group of persons with a distinct culture. 8 C.F.R. § 214.2(p)(3). Vague references to the "unique techniques" of BJJ, and BJJ as "the art which was developed in Brazil and unique to Brazil" are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

### III. Conclusion

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner has not satisfied these evidentiary requirements. Accordingly, the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.