



“CULTURALLY UNIQUE” DEFINITION UNDER P-3 VISA CAN INCLUDE HYBRID OR FUSION ART FORMS OF MORE THAN ONE CULTURE OR REGION

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U.S. Citizenship and Immigration Services' (USCIS) Administrative Appeals Office (AAO) issued a binding precedent decision in [Matter of Skirball Cultural Center](#), 25 I&N Dec. 799 (AAO 2012) addressing the term "culturally unique" and its significance in adjudicating P-3 visa petitions for performing artists and entertainers. This decision is significant in light of a growing trend where the culturally unique artistic tradition of one country or ethnicity is influenced by artistic traditions from elsewhere. For instance, musicians trained in Indian classical music have incorporated Western jazz and rock influences. The most famous example of such a fusion band was [Shakti](#), which incorporated South Indian [Carnatic music](#) and jazz elements, featuring guitarist John McLaughlin, South Indian violinist L. Shankar and Zakir Hussain on tabla and T.H Vikku Vinayakram on the ghatam (an earthen pot). Examples of hybrid groups abound all over the world, and a contemporary example is [Afro Celt Sound Systems](#), which is a hybrid of African and Celt music. [Afrobeat](#) is another classic example of a fusion genre that originally fused American funk music with African rhythms, and its main exponent has been Fela Kuti. Until this decision, there was a risk that such groups would not be considered to be “culturally unique” as they did not incorporate the music which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

The Skirball Cultural Center filed a P-3 nonimmigrant petition on behalf of a musical group from Argentina that was denied a performing artists' visa for failing to establish that the group's performance was "culturally unique" as required for this visa classification. [USCIS noted](#) that "due to the unusually

complex and novel issue and the likelihood that the same issue could arise in future decisions, the decision was recommended for review."

The AAO approved the petition after its review of the entire record, which included expert written testimony and corroborating evidence on behalf of the musical group. USCIS said that the regulatory definition of "culturally unique" requires the agency to make a case-by-case factual determination. The decision clarifies that a "culturally unique" style of art or entertainment is not limited to traditional art forms, but may include artistic expression that is deemed to be a hybrid or fusion of more than one culture or region.

The petitioner had sought classification of the beneficiaries as P-3 entertainers for a period of approximately six weeks. The beneficiaries were musicians in the group known as Orquesta Kef. The ensemble of seven musicians from Argentina had been performing together for between four and eight years, according to a letter dated September 2009, and performed music that blended klezmer (Jewish music of Eastern Europe) with Latin and South American influences. The group's biography stated that the band had developed "its own and unique musical style" based on "the millenary force of tradition and the powerful emotion of the Jewish culture, mixed in with Latin American sounds." The petitioner also provided a letter from an associate professor at the University of Southern California's Annenberg School for Communication supporting the band's claim to cultural uniqueness, among other submitted expert opinion letters and published materials.

The decision noted that Congress did not define the term "culturally unique" and the former Immigration and Naturalization Service (now USCIS) defined it in regulations as "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." See 8 C.F.R. § 214.2(p)(3)(2012).

In her decision denying the petition, the director stated that a hybrid or fusion style of music "cannot be considered culturally unique to one particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons."

The AAO said that the director's reasoning was not supported by the record, noting:

he fact that the regulatory definition allows its application to an

unspecified "group of persons" makes allowances for beneficiaries whose unique artistic expression crosses regional, ethnic, or other boundaries. While a style of artistic expression must be exclusive to an identifiable people or territory to qualify under the regulations, the idea of "culture" is not static and must allow for adaptation or transformation over time and across geographic boundaries. The term "group of persons" gives the regulatory definition a great deal of flexibility and allows for the emergence of distinct subcultures. Furthermore, the nature of the regulatory definition of "culturally unique" requires USCIS to make a case-by-case factual determination based on the agency's expertise and discretion. Of course, 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. To determine whether the beneficiaries' artistic expression is unique, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the entire record.

The AAO pointed out that the director's decision failed to note that the beneficiary group was a klezmer band and "seemed to struggle to identify the nature of the group's musical performance, focusing instead on the group's musical influences. Here, the evidence establishes that the beneficiaries' music is, first and foremost, Jewish klezmer music that has been uniquely fused with traditional Argentine musical styles." The AAO said it found particularly persuasive an expert opinion explaining that klezmer music, "while often associated with ethnically Jewish people, is an artistic form that has migrated and is continually mixed with and influenced by other cultures." The AAO also noted the fact that the beneficiaries were South Americans born to Eastern European immigrants and therefore were influenced by both cultures to create something new and unique to their experience. All the opinion letters submitted also recognized the existence of a distinct Jewish Argentine culture and identity that was expressed in the beneficiary group's music. Furthermore, the AAO noted, the published articles submitted recognized a musical movement in Argentina that fuses Argentine styles with influences from Jewish music and other Eastern European styles, and the articles and opinion letters placed the beneficiary group at the forefront of this trend.

Accordingly, the AAO found that the petitioner had established by a preponderance of the evidence that the modern South American klezmer music performed by the beneficiary group was representative of the Jewish culture of the beneficiaries' home country of Argentina and that the group's musical performance therefore fell within the regulatory definition of "culturally unique." The AAO added that the petitioner had submitted an itinerary showing that the beneficiary group would be performing at Jewish cultural centers and temples during its U.S. tour, which provided further evidence that the performances would be culturally unique events.

Matter of Skirball Cultural Center remarkably recognizes the significance of crossover cultural trends and that "the idea of culture is not static," which is increasing in our globalized world, where people have access to music from anywhere on an iPhone and have learned to enjoy fusion and hybrid forms. The favorable impact of this decision can extend to other art forms such as dance and drama too. Thanks to this decision, audiences in America need not fear of being deprived of hearing their favorite fusion bands live!