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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

PUBLIC COPY

File: WAC-01-127-52550 Office: California Service Center Date: 0 7 NOV 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER: [redacted]

entifying data deleted to
event clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner in this matter is described as a producer and agent for entertainment groups. The beneficiary of the instant petition are eleven members of a professional entertainment group known as *The Peking Acrobats*. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking extension of stay of the eleven members of the group named in the petition for an additional one-year period under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act"). The petitioner seeks to continue to employ the beneficiaries temporarily in the United States on a continuous tour of various venues.

The director denied the petition finding that the petitioner failed to establish that The Peking Acrobats are an internationally recognized entertainment group eligible for P-1 classification and failed to establish that they performed as a group within the meaning of the pertinent regulations.

On appeal, counsel for the petitioner submitted a brief arguing that the entertainment group qualifies for the benefit sought.

Section 214(c)(4)(B)(i) of the Act, 8 U.S.C. 1184(c)(4)(B)(i), provides, in pertinent part, that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,
>
> (II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and
>
> (III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

In order to establish eligibility for P-1 classification as an entertainment group, a petitioner must satisfy each of several eligibility requirements.

8 C.F.R. 214.2(p)(1) provides for classification of artists, athletes, and entertainers under a variety of circumstances:

> (i) *General*. Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team, or member of an internationally recognized entertainment group.

In the case of entertainers, the pertinent regulations also provide, in part, that individual alien performers may be admitted to the United States in P-1 classification as a member of an internationally recognized entertainment group. 8 C.F.R. 214.2(p)(1)(i). The alien must maintain a foreign residence he or she has no intention of abandoning. Id. The alien may be admitted for a period not to exceed one year and the stay may be extended in increments of one year. 8 C.F.R. 214.2(p)(8)(iii)(B). P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform independently. 8 C.F.R. 214.2(P)(4)(iii)(A). At least 75 percent of the group must have had a minimum of one year relationship with the group. Id. The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The first issue to be reviewed is that the director expressed concern that the variation in the number and makeup of performers in The Peking Acrobats at any one time, and the fact that its performances were delivered in a series of apparently independent "acts," served to disqualify it from satisfying the definition of an entertainment "group" pursuant to 8 C.F.R. 214.2(p)(3).

8 C.F.R. 214.2(p)(3) states that:

> *Group* means two or more persons established as one entity or unit to perform or to provide a service.

The record reflects that the beneficiary, The [redacted] was established in 1986 and has been a registered trademark corporation in the United States since 1995. The petitioner stated that the members of the group are drawn from the Hunan Acrobatic Troupe in the People's Republic of China. The petitioner indicated that the group has been on continuous tour in the United States and Canada since 1986. The size and makeup of the group at any one time varies according to the scheduled performances of the group.

After a review of the record, it is concluded that the fact that the group known as The Peking Acrobats has been on continuous tour for more than fifteen years, while unusual, is not disqualifying. The fact that the beneficiary in this matter is made up of an *ensemble* of performers, the number and makeup of which varies, does not disqualify the beneficiary from being considered as an "entertainment group" under the regulations. An *ensemble* configuration of a performing arts company is not an uncommon arrangement of performing arts companies in the entertainment field. Such groups that continually varying their makeup according to the nature of the performance(s) scheduled and the availability of individual performers.

On review, it may be concluded that the fact that the total membership of the group varies and that the makeup of individual performers named on different petitions varies is not adverse to the petition. The petitioner still bears the burden to establish that the individual performers each satisfy the other criteria listed in the regulations.

It is noted that the director concluded that the eleven members named in the instant petition were not named on a previously submitted O-1 petition, #WAC-01-047-50466. However, the petitioner furnished a copy of the approval notice of petition #WAC-00-039-51017 where the eleven members were named as recipients of P-1 classification. The frequency with which the members of the group depart and are reassembled is not a necessarily adverse factor. Accordingly, while the director's concern regarding the ability of the Service to account for the members of the group is reasonable, there is no indication that the frequent filing of petitions is necessarily adverse.

The next issue raised by the director is whether the petitioner established that the entertainment group is internationally recognized.

8 C.F.R. 214.2(p)(1)(ii)(A) provides P-1 classification to an alien who is coming temporarily to the United States:

> (2) To perform with, or as an integral part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has a sustained and substantial; relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

8 C.F.R. 214.2(p)(3) define international recognition as follows:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.

8 C.F.R. 214.2(p)(4)(iii)(B) requires that a petition for members of internationally recognized entertainment groups must be accompanied by:

(1) Evidence that the group has been established and performing regularly for at least 1 year;

(2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and

(3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial amount of time. This may demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field or by three of the following types of documentation:

(i) Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(ii) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(iii) Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(iv) Evidence that the group has a record of major commercial or critical successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;

(v) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(vi) Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field as evidenced by contracts or other reliable evidence.

The petitioner furnished extensive documentation in the form of reviews and promotional material that the group is known as a leading acrobatic group in the United States and Canada and that they play at prominent venues. The documentation included information regarding one of the group's acts, the "human chair stack," as having been entered in the Guinness Book of World Records as the world's largest such act.

It is further recognized that a stand-alone acrobatic troupe[1] is an uncommon form of an entertainment group and may be somewhat unique as one of the few such groups continuously performing at the international level. As a unique type of entertainment group, many of the criteria listed at 8 C.F.R. 214.2(p)(4)(iii)(B)(3) are not readily applicable.

Accordingly, based on a review of the evidence of record as a whole, it may be concluded that the beneficiary has a demonstrated degree of skill and recognition substantially above that ordinarily encountered in the field of entertainment and qualifies as "internationally recognized" within the meaning of section 101(a)(15)(P) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden and the appeal may be sustained.

ORDER: The appeal is sustained.

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[1] The term "stand-alone acrobatic troupe" is used to distinguish the beneficiary from a smaller acrobatic troupe that performs as a subordinate part of a circus or some other parent entertainment group.