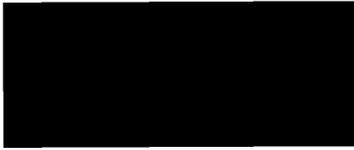




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: EAC-01-053-53974 Office: Vermont Service Center Date:

MAY 22 2001

IN RE: Petitioner:
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: Self-represented

Identifying data deleted to
prevent 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner appears to be a record company. The beneficiary is a member of the DIGNA ISABEL GROUP, a thirteen-member musical group from Ecuador. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act"). The petitioner seeks to employ the beneficiary temporarily in the United States for a period of four months.

The director denied the petition finding that the petitioner failed to establish that the beneficiary was an internationally recognized entertainment group and that the petitioner failed to submit a qualifying contract and itinerary as required.

On appeal, the petitioner submitted documents reflecting that the group had performed in Argentina, a consultation letter from the American Federation of Musicians (the "AFM"), and a one-page Spanish-language document labeled "artistic contract."

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.

The first 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. (Emphasis added).

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 letter from the AFM opined that the group is "clearly" recognized internationally and stated no objection to the granting of the petition. However, a favorable opinion from a labor organization is not sufficient to establish the requisite international recognition. It is further noted that the AFM letter referred to the group's recognition in the "Tex-Mex field" which appears an unusual artistic discipline for a musical group from Ecuador.

The petitioner submitted no evidence that the group has won a significant award, been reviewed in a major newspaper or trade journal, achieved major commercial success in its record sales, received significant recognition from critics, or commanded a high salary as listed in the above regulations. Therefore, it must be concluded that the petitioner failed to overcome this portion of the director's objection.

The next issue is whether the petitioner submitted a qualifying contract.

8 C.F.R. 214.2(p)(2)(ii) requires all petitions for P classification to be accompanied by:

(A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts...

(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.

8 C.F.R. 214.2(p)(3) defines a qualifying contract as:

Contract means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

The contract submitted by the petitioning record company stated that the group will perform at "various within USA" and will receive \$10,000 per week. The supplemental document submitted on appeal was in a foreign language without English translation and cannot be accepted. 8 C.F.R. 103.2(b)(3).

On review of the record it must be concluded that the petitioner did not submit a sufficient description of the group's itinerary or terms of employment. Furthermore, it did not submit proof of its ability to pay the proffered wage to the group as required by 8 C.F.R. 204.5(g)(2).

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 not met that burden.

ORDER: The appeal is dismissed.