

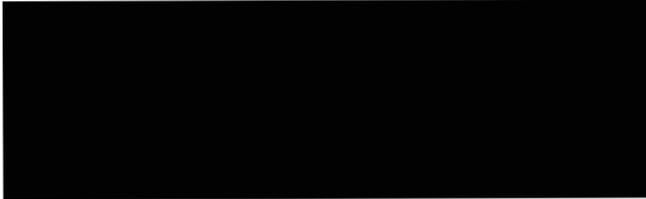


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U.S. Department of Justice

Immigration and Naturalization Service

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

File: LIN-00-269-50124

Office: Nebraska Service Center

Date: JUN 18 2002

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



PUBLIC COPY

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 V. Wiemann
for Robert V. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, on September 22, 2000, seeking classification of the beneficiaries under section 101(a)(15)(P)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1101(a)(15)(P)(i). The petitioner is an entertainment group in P-1 classification. The beneficiary is an eight-member team of stage technicians. The petitioner seeks P-1 classification and extension of stay of the eight beneficiaries of this petition as essential support aliens.

The director denied the petition on November 1, 2000, finding that the extension of stay for the entertainment group had been denied and that the essential support aliens were therefore ineligible for extension of their derivative status.

The director reopened the proceeding on February 15, 2001 and issued a new decision. The director noted that the petitioner had filed two separate petitions for support aliens and questioned the need of a five-member musical group for 16 essential support aliens. The director found that the petitioner failed to establish that the beneficiaries satisfied the criteria for essential support aliens.

On appeal, counsel for the petitioner submitted additional documentation.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence 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 sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

Regarding the director's first decision:

8 C.F.R. 214.2(p)(4)(iv) provides for P-1 classification of an alien as an essential support alien who:

(A) *General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

The P-1 entertainment group in this matter is the five-member musical group *Los Temerarios*. While the director did not place documentation of the denial of the group's extension of stay in the instant record, counsel did not challenge this finding of fact in his appeal. Pursuant to 8 C.F.R. 214.2(p)(4)(iv), if the P-1 classification of the entertainment group has expired, any P-1 support aliens are ineligible for extension of the classification as well.

Regarding the director's second decision:

8 C.F.R. 214.2(p)(3) states in pertinent part:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien.

On appeal, counsel asserted that *Los Temerarios* is a touring and recording musical group and requires the services of its technical support personnel.

On review, counsel's argument is not persuasive. The petitioner must establish that all its alien support personnel are integral to the performance of the entertainment group and that those services cannot be readily performed by a United States worker. The petitioner's statement on appeal is insufficient to satisfy the regulatory standard. A mere desire to employ stage or recording technicians is not sufficient to satisfy this standard.

The burden of proof in visa petition proceedings remains entirely 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.