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U.S. Department of Justice
Immigration and Naturalization Service

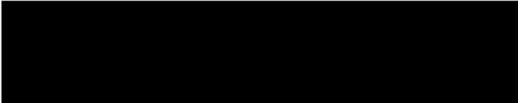
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: LIN-02-036-52543 Office: Nebraska Service Center Date: MAR - 4 2002

IN RE: Petitioner:
Beneficiaries:



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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected; the record will be remanded.

The petitioner in this matter is described as a radio station serving a Croatian immigrant audience. The beneficiaries are folk musicians from Croatia. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, as an entertainment group in a culturally unique field.

The petition was filed on November 9, 2001. The center director denied the petition in a decision dated December 4, 2001. The director denied the petition on the grounds that the petitioner failed to submit an itinerary of performances of the beneficiaries as required by 8 C.F.R. 214.2(p)(2)(ii)(C).

On appeal, the petitioner reiterates that a specific itinerary of performances of the beneficiaries cannot be provided until the petitioner is sure that the requirements for their visas have been satisfied.

Pursuant to 8 C.F.R. 103.3(a)(2)(i), an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. Pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(1), an untimely appeal must be rejected. The decision in this matter was issued on December 4, 2001, and the appeal was filed on January 28, 2002. The appeal was untimely filed and must be rejected.

Pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(2), an untimely appeal that meets the requirements of a motion to reopen or a motion to reconsider must be treated as a motion. Pursuant to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction on a motion to reopen or reconsider lies with the official who made the latest decision in the proceeding. Accordingly, the record will be remanded to the center director to determine whether the appeal meets the applicable requirements of a motion to reopen or a motion to reconsider.

It is noted for the record that the petitioner did not properly complete the Form I-129 at Part 5 where it is required to state the dates of intended employment. This information is used by the Service to determine the period of admission for which the P-3 visa may be valid.

When the petition was filed on November 9, 2001, the petitioner sought admission of the beneficiaries for 30 days for performances on November 4 and 11, 2001. The petitioner submitted a second undated letter stating that those performances were cancelled and requesting admission of the beneficiaries for unspecified performances for the period between December 22, 2001 and February 1, 2002. This second desired period of admission has lapsed.

In a letter dated January 17, 2002, the petitioner provided a third listing of performances, consisting of seven dates and four cities. Three of these dates have lapsed, and the petitioner has not provided an explanation of the nature of the events or activities included in this third list of performances, as required by 8 C.F.R. 214.2(p)(2)(ii)(C).

ORDER: The appeal is rejected; the record is remanded to the center director, on jurisdictional grounds, for treatment as a motion.