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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: LIN 03 021 53838 Office: NEBRASKA SERVICE CENTER Date: **AUG 18 2003**

IN RE: Petitioner:
Beneficiaries:

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)

ON BEHALF OF PETITIONER:

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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a record company for the beneficiary band. The beneficiaries of the instant petition are six members of a professional entertainment group known as *Thomas Mapfumo and the Blacks Unlimited*. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of six members of the group named in the petition for a one-year period under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act).

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries are active members of the band.

On appeal, counsel for the petitioner submits a brief arguing that the beneficiaries have performed with the beneficiary band, albeit outside the United States.

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.

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 record reflects that the entertainment group known as *Thomas Mapfumo and the Blacks Unlimited* has been on tour in the United States for more than one year. The petitioner stated that the named beneficiaries are members of the group, even though they have not performed with the beneficiary group in the United States. The petitioner indicated that the size and makeup of the group at any one time varies according to the scheduled performances of the group. According to the evidence on the record, the six beneficiaries have performed with the group between 11 and 15 times over a period of the past four to six years.

The regulations state that each alien member of the entertainment group must have had a sustained and substantial relationship with the group ordinarily of at least a year. 8 C.F.R. § 214.2(p)(1)(ii)(A)(2). In review, the petitioner has failed to establish that the six beneficiaries have had a sustained and substantial relationship with the group.

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.