



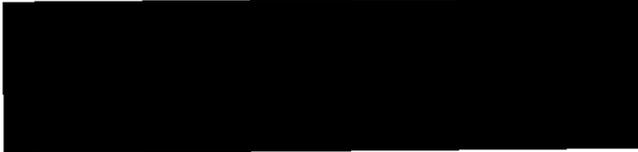
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U.S. Department of Justice

Immigration and Naturalization Service



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



FILE: LIN 02 121 53729

Office: NEBRASKA SERVICE CENTER

Date:

JAN 23 2003

IN RE: Petitioner:
Beneficiary:



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:



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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is an agent. The beneficiaries are two vocalists who perform as a duo. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking a one-year extension of a P-3 classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), as entertainers in a culturally unique field. The petitioner seeks to employ the beneficiaries, paying each a salary of \$6,000 a year, plus room, board and insurance.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries' stay was temporary and that they had completed the event for which they initially entered the United States. The director denied the petitioner's request for an extension of stay on behalf of the beneficiaries, finding that the beneficiaries failed to maintain status.

On appeal, counsel for the petitioner asserts that the director's decision that the beneficiaries' stay is not temporary is unsupported by law and regulations. Counsel for the petitioner also argues that the director erred in determining that the beneficiaries were not in lawful status at the time of filing the I-129 petition. On appeal, the petitioner provided additional documentation.

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

8 C.F.R. 214.2(p)(3) provides, in pertinent part, that:

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

8 C.F.R. 214.2(p)(6)(i) further provides:

(A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

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

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

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(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.

The beneficiaries initially entered the United States on visitor visas on December 8, 1995. An initial petition was filed on the beneficiaries' behalf to change their status to P-3 by Svetlana in 1997. A second P-3 petition was filed on their behalf by Moscow Nights Restaurant. The third, fourth, fifth, sixth and seventh P-3 petitions were filed by their current employer, GHL Group, Inc.

The petitioner described the nature of the event(s) as follows: "Russian/Ukrainian festivals, fairs and cultural events; Ethnic and cultural celebrations; Dance performances." The petitioner indicated that it has a contract with the beneficiaries to perform at three different venues including a restaurant five nights per week, folk festivals twice a month, and additional entertainment events twice a month.

The first issue raised on appeal is whether the petitioner has established that the beneficiaries are aliens having a foreign residence which the aliens have no intention of abandoning who seek to enter the United States temporarily as required by Section

'101(a)(15)(P)(iii) of the Act.

The beneficiaries are natives of the former Soviet Union and citizens of Russia. They initially entered the United States in 1995. There is no evidence in the record or in the Service database that they have left the United States since they initially entered in 1995, or that they have a foreign residence in Russia. They are seeking their seventh extension of P-3 classification. The evidence is insufficient to establish that the beneficiaries are aliens having a foreign residence which they have no intention of abandoning who seek to enter the U.S. temporarily.

The second issue raised on appeal is whether the beneficiaries have completed the event for which they initially entered the United States. The Attorney General may extend the period of authorized status of a P nonimmigrant in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. Section 214(a)(2)(B) of the Act, 8 U.S.C. 1184(a)(2)(B). In the instant case, the petitioner has repeatedly sought and received extensions on the duration of status of the beneficiaries, presumably to complete an event.

The term event is defined at 8 C.F.R. 214.2(p)(3) as "an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement." The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Here, the petitioner has repeatedly sought extensions thereby indefinitely extending the beneficiaries' stay. The petitioner has failed to overcome the director's objection.

The third issue raised on appeal is the director's denial of the beneficiaries' request for extension of status. This issue is not appealable under the regulations and will not be considered or addressed. 8 C.F.R. 214.1(c)(5).

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.