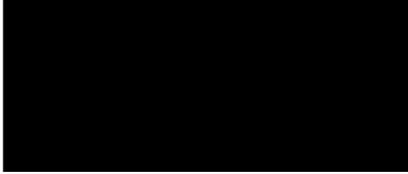


U.S. Department of Homeland Security

Citizenship and Immigration Services

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prevent clearly unwarranted  
invasion of personal privacy

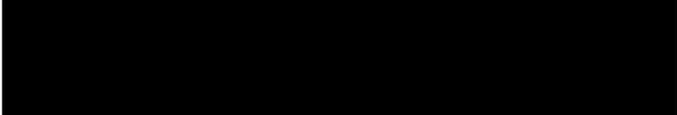
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



DP

File: EAC 03 160 53460 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



NOV 19 2003

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:

SELF-REPRESENTED

PUBLIC COPY

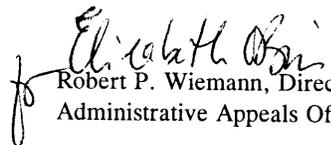
INSTRUCTIONS:

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.

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further action.

The petitioner in this matter is an entertainment company, acting in the capacity of an agent to the beneficiary. The beneficiary is a six-piece band. 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), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner seeks to employ the beneficiary temporarily in the United States to perform at various locations in the United States.

The director denied the petition, finding that the petitioner failed to establish that 75% of the six individuals listed on the petition have been performing with the group for a one-year period.

On appeal, the petitioner submits additional documentation.

Section 101(a)(15)(P)(i) of the Act provides classification to a qualified alien having a foreign residence which the alien has no intention of abandoning who performs with or is an integral or essential part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with the group over a period of at least one year.

Section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B), states, in pertinent part:

(i) For purposes of section 101(a)(15)(P)(i)(b), an alien is described in this subparagraph if the alien -

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(II) in the case of a performer or entertainer . . . has had a sustained and substantial relationship with that group (ordinarily for at least one year) . . . and . . .

(III) (iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

8 C.F.R. § 214.2(p)(1) provides for classification of artists, athletes, and entertainers:

(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 ... [a] member of an internationally recognized entertainment group.

P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform separate and apart from the group. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except for the limited circumstances provided for in 8 C.F.R. § (p)(4)(iii)(C)(2) relating to certain nationally known entertainment groups, it must be established that the group has been internationally recognized as outstanding for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of a one-year relationship with the group and must provide functions integral to the group's performance. *Id.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

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) defines 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.

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 a period of 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 be 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 sole issue raised by the director is whether the petitioner established that at least 75% of the beneficiary's six-member band has been performing together for at least one year.

The director acknowledged that the petitioner had established that four members of the band had been performing together for at least one year. The director found that the petitioner failed to establish that Josafat Alba Bolanos had been associated with the group for at least one year. The director further found that the petitioner had failed to establish that Ruperto Moron Aguilar and Roberto Moron Aguilar were one and the same person; ergo, failed to establish that more than 75% of the band had been performing together for at least one year.

On appeal, the petitioner submitted a copy of Ruperto Moron Aguilar's passport and copies of CD covers that list Roberto Moron Aguilar as a member of the beneficiary band. The petitioner has established that Ruperto Moron Aguilar and Roberto Moron Aguilar are one and the same; therefore, the beneficiary satisfies the 75% rule.

The director's decision is deficient in that it failed to address whether the petitioner established the remaining evidentiary criteria for a P-1 entertainment group.

Accordingly, the director's decision will be withdrawn and the case will be remanded to the director so he may review the record as it is presently constituted, and request any additional evidence deemed necessary to assist him in determining whether the criteria outlined in 8 C.F.R. 214.2(p)(4)(iii)(B)(3) have been met. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.