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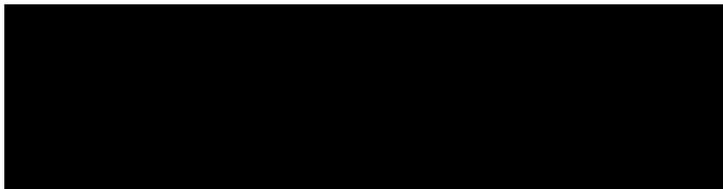


U.S. Citizenship and Immigration Services

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APR 13 2004



FILE: WAC 03 138 52253 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner in this matter is a music production company. The beneficiary is an individual entertainer who plays the tabla (Indian drums). The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(P)(iii), as an entertainer in a culturally unique program. The petitioner seeks a continuation of the beneficiary's P-3 nonimmigrant visa petition validity to continue to employ the beneficiary to record, perform and teach culturally unique music for an additional five months.

The director denied the petition, finding that the petitioner failed to provide the required consultation and failed to establish that all of the beneficiary's performances or presentations would be culturally unique events.

On appeal, counsel for the petitioner submits an explanation of the events, and a favorable consultation from the American Guild of Musical Artists. Counsel requested an additional thirty days in which to submit a brief and/or additional evidence. More than seven months have lapsed since the appeal was filed and nothing more has been submitted for the record.

Section 101(a)(15)(P)(iii) of the Act, provides for visa 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.

The regulation at 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.

The regulation at 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 regulation at 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.

The regulation at 8 C.F.R. § 214.2(p)(7)(v) states in pertinent part that a consultation with an appropriate labor organization is required for P-3 petitions involving aliens in culturally unique programs.

The regulation at 8 C.F.R. 214.2(p)(13) states:

Extension of visa petition validity. The petitioner shall file a request to extend the validity of the original petition . . . in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

The first issue to be evaluated in this proceeding is whether the director correctly denied the petition on the basis that the petitioner failed to submit a consultation with its request for an extension of visa petition validity. Counsel for the petitioner initially asserted that there was no requirement to submit a consultation with a request for an extension of visa petition validity. Counsel's assertion is correct unless the director requests such. In the instant case, the director failed to request a consultation in his request for additional evidence; therefore it was not the proper basis for denying the petition. Nonetheless, the petitioner submitted a consultation on appeal.

The second issue raised by the director is whether the petitioner established that the beneficiary is coming to the United States to perform, teach or coach as a culturally unique artist in a culturally unique program. The director found that the itinerary in support of the petition was deficient in that it failed to specify the names and addresses of the actual employers, the names of the establishment venues, or locations where services would be performed.

In order to establish eligibility for P-3 classification, a petitioner must establish that the alien artist seeks admission to the United States in order to perform, teach, or coach as a culturally unique artist in a commercial or noncommercial program that is culturally unique.

In this case, the petitioner indicated in a letter accompanying its Form I-129 petition that the beneficiary would perform the Indian drums (tabla) at recordings and performances scheduled by the petitioner. In a request for additional evidence, the director requested that the petitioner submit an explanation of the events and evidence showing that all of the performances or presentations would be culturally unique events. In response to the request for additional evidence, the petitioner submitted evidence that the beneficiary's music form and instrument (the tabla) is culturally unique to India's Hindus. In a supplemental response to the request for additional evidence, the petitioner submitted a revised itinerary, which establishes that all of the beneficiary's performances would be culturally unique events. The revised itinerary meets the requirements of the regulation at 8 C.F.R. § 214.2(p)(2)(ii)(C). The evidence submitted meets the requirements for evidentiary criteria set forth in the regulation at 8 C.F.R. 214.2(p)(6)(ii)(B).

On review, the petitioner has overcome the director's objections. The petitioner has established that the beneficiary is coming to the United States to perform and teach as a culturally unique artist in a culturally unique program.

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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 met that burden.

ORDER: The appeal is sustained.