



U.S. Citizenship
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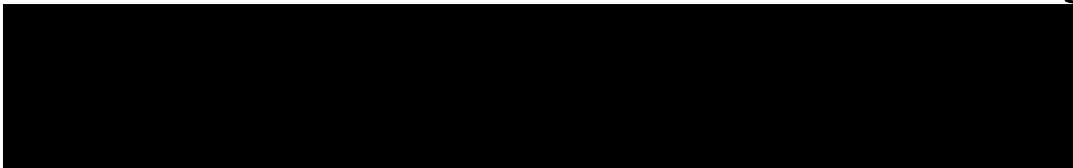
File: EAC 03 101 52416

Office: VERMONT SERVICE CENTER

Date:

APR 13 2004

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the
Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:



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.


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 appeal will be dismissed.

The petitioner is a company that promotes and manages musical and dance groups. The beneficiaries are six members of a Russian dance ensemble. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking an extension of the beneficiaries classification under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of one year.

The director denied the petition, finding that the petitioner failed to submit to CIS a consultation with a labor organization that has expertise in the area of the beneficiary's field of endeavor as required by the regulation at 8 C.F.R. § 214.2(p)(7)(ii).

On appeal, counsel for the petitioner asserts that the director erred in denying the petition and states that he would submit a brief and/or additional evidence to the AAO within thirty days of filing the appeal. More than seven months have lapsed since the petitioner filed the instant appeal and nothing more has been submitted for the record.

Under section 101(a)(15)(P)(i) of the Act, an alien who performs with or who is an integral and essential part of the performance of an internationally recognized entertainment group, who has a foreign residence 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 sponsor.

The regulation at 8 C.F.R. § 214.2(p)(1)(i) provides for P-1 classification of an alien:

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

The regulation at 8 C.F.R. § 214.2(p)(7) states that a consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

The regulation at 8 C.F.R. § 214.2(p)(13) states, in pertinent part:

The petitioner shall file a request to extend the validity of the original petition . . . on Form I-129 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.

(Emphasis added).

According to the evidence on the record, the petitioner last sought P-1 classification for the beneficiaries in 2002. The petition was approved with validity dates from February 19, 2002 to February 18, 2003. In the instant petition, the same petitioner sought to extend the validity of the petition. The director requested additional evidence in the form of a new consultation. Counsel for the petitioner responded to the request for additional evidence by arguing that there is no requirement that a consultation be provided to obtain an extension. Counsel for the petitioner submitted a copy of a September 29, 1992 letter written by Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch of Adjudications, in support of his assertion that a consultation is not required for extensions. Counsel's argument is not persuasive. The Bednarz letter relates to general

requirements for extensions and not to situations such as the instant case in which the director specifically requests a consultation. The regulation states that supporting documentation is not required for an extension unless requested by the director. In the instant case, the director requested supporting documentation in the form of a new or updated consultation. The petitioner failed to submit the requested documentation.

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.