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

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

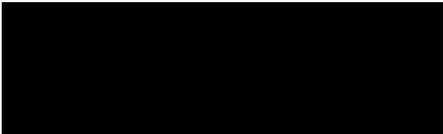


File: LIN 03 126 56176 Office: NEBRASKA SERVICE CENTER Date: **JAN 21 2004**

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)

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.

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.

*for*   
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 (AAO) on appeal. The decision of the director will be withdrawn and the case remanded to the director for the entry of a new decision.

The petitioner in this matter is an artist management group and talent agency. The beneficiary is described as a member of a Russian folk song and dance troupe. The beneficiary last entered the United States on September 18, 1999 as a P-1 nonimmigrant. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of stay, and re-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 a culturally unique artist or entertainer. The petitioner seeks to employ the beneficiary for a period of one year to perform two nights per week for a total of 96 concerts.

In a request for evidence the director asked the petitioner to submit evidence establishing that the beneficiary qualifies as a P-3 alien, and requested copies of previous approval notices authorizing the beneficiary's P-3 employment since his arrival in the United States. In response, the petitioner submitted additional documentation, including approval notices indicating that the beneficiary's P-1 nonimmigrant status had been extended three times.<sup>1</sup>

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfied the requirements for classification as a P-1 member of an entertainment group as set forth in the regulation at 8 C.F.R. § 214.2(p)(4)(iii). The director also found that the event or events for which the beneficiary had been admitted were concluded, and that the beneficiary did not have a foreign residence which he had no intention of abandoning.

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

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<sup>1</sup> P-1 classification was previously approved and extended on behalf of the beneficiary from November 28, 2000 to March 17, 2001 (LIN 00 258 52390); from March 17, 2001 to March 17, 2002 (LIN 01 123 52594); and from March 18, 2002 to March 17, 2003 (LIN 02 117 53516).

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.

At issue is whether the petitioner has established that the beneficiary qualifies as a culturally unique artist or entertainer coming to the United States either individually or as a member of a group solely to perform in a culturally unique program within the meaning of this provision.

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)(6)(i) 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)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or the group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) provides that all petitions for P nonimmigrant aliens 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.

In the decision denying the petition, the director mistakenly indicated that the beneficiary did not meet the criteria for members of an internationally recognized entertainment group under the P-1 classification at 8 C.F.R. § 214.2(p)(4)(i)(B) and § 214.2(p)(4)(iii). As the decision did not address whether the beneficiary met the criteria for eligibility as a culturally unique artist or entertainer under regulations describing the P-3 classification, the decision of the director will be withdrawn and the case remanded for the entry of a new decision.

In the request for evidence dated April 15, 2003, the director requested that the petitioner submit the following evidence to establish the beneficiary's eligibility as a P-3 alien:

- (1) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
- (2) Evidence that all of the performances or presentations will be culturally unique events. Include an itinerary of performances if you have not already done so.

While this request addresses some of the issues necessary to establish P-3 classification, as the petitioner was seeking a reclassification of the beneficiary from P-1 to P-3, the director should have requested evidence to establish that the beneficiary qualifies for the classification under all of the relevant regulations for P-3 aliens, e.g., 8 C.F.R. § 214.2(p)(3), 8 C.F.R. § 214.2(p)(6)(i) and (ii), and 8 C.F.R. § 214.2(p)(2)(ii) and (iv)(E), quoted above.

The director indicated in his decision that the event or events for which the beneficiary initially entered the United States had

been completed. As the petitioner requested a reclassification to P-3 and extension of stay, the director should have requested an itinerary and a description of the nature of the events, in order consider whether the petitioner has established that the beneficiary is coming to solely to perform in culturally unique events. 8 C.F.R. § 214.2(p)(2)(ii) and 8 C.F.R. § 214.2(p)(6)(i)(B) and (ii)(C).

The petition was denied, in part, on the grounds that the petitioner had not established that the beneficiary had a foreign residence which he had no intention of abandoning. As the request for evidence did not raise this issue, the director should give the beneficiary the opportunity to overcome this concern.

The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) provides that where the agent for the beneficiary is the petitioner, the petition is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

It is noted that the record contains only the first page of a summary of an oral contract between the petitioner and the beneficiary. The contract appears deficient in that it does not comply with the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) for agents filing the petition.

The director's decision will be withdrawn. The case will be remanded to the director to issue a request to the petitioner for evidence that the beneficiary qualifies as a P-3 artist or entertainer. The director will consider the evidence, and render a new decision using the standards set forth for P-3 aliens.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision dated August 2, 2003 is withdrawn. The case is remanded to the director to request additional evidence and to enter a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.