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**U.S. Citizenship
and Immigration
Services**

D9



FILE: SRC 05 063 50385 Office: TEXAS SERVICE CENTER Date: **DEC 13 2005**

IN RE: Petitioner:
Beneficiaries:



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:

SELF-REPRESENTED

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the nonimmigrant visa petition in a decision dated January 24, 2005. The petitioner appealed the director's decision to deny the petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a professional marketing firm. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiaries under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act) for a period of two years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries are eligible for classification as P-1 entertainers and failed to submit an advisory opinion from an appropriate labor organization.

On appeal, the petitioner submits an advisory opinion from an appropriate labor organization, American Guild of Musical Artists.

Under section 101(a)(15)(P)(i) of the Act, an alien having 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. Section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

- (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
- (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for a P nonimmigrant include:

- (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; and
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.
- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(7)(i) requires, in pertinent part:

- (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.

Finding the evidence insufficient, on January 10 2005, the director requested that the petitioner submit additional evidence, including a written consultation from a labor organization. The petitioner responded to the request for additional evidence, and stated that since the beneficiaries are non-unionized and would not be performing under any equity performance union contracts, there was no written consultation from a labor organization.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Based on the record of proceeding before the director, the petitioner did not provide the requisite consultation in accordance with 8 C.F.R. § 214.2(p)(7)(i). For this additional reason, the petition may not be approved.

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.