



U.S. Citizenship
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FILE: EAC 03 266 55300 Office: VERMONT SERVICE CENTER

Date: DEC 22 2005

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:

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 Vermont Service Center Acting Director denied the nonimmigrant visa petition in a decision dated November 7, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of 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 to continue to employ the beneficiary for an additional year.

The director denied the petition, finding that the petitioner failed to establish that all of the beneficiary's performances would be culturally unique and that the beneficiary performs a style of artistic expression, methodology or medium that is culturally unique. The director further determined that one of the 22 listed beneficiaries should not have been included in the instant petition because as an engineer, he is support staff.

On appeal, the petitioner submits additional documentation, including documentation that had been previously submitted.

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 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 first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is a culturally unique entertainment group. The petitioner asserts that the beneficiary, [REDACTED] is a chutney and calypso group from Trinidad and Tobago. Initially, the petitioner submitted a favorable consultation, copies of press clips and playbills. Consultations are advisory in nature and are not binding on Citizenship and Immigration Services (CIS). 8 C.F.R. § 214.2(o)(5)(i)(D). The petitioner submitted copies of press clippings without indicating the names and dates of the publications. The playbills list the beneficiary's name but fail to indicate the genre of music. Finding the evidence insufficient, the director requested the petitioner to submit additional evidence. Inter alia, the director requested that the petitioner provide affidavits, testimonials, or letters from recognized experts, attesting to the authenticity and excellence of the group's skills in performing or presenting the unique or traditional art form. The director stated that the petitioner must explain the level of recognition accorded to the group and give the credentials of the expert including the basis of his or her knowledge of the beneficiary's skill and recognition. In response, the petitioner resubmitted a consultation and submitted additional clippings. The petitioner failed to include the names of some of the publications. The petitioner included a partial copy of a clipping titled "[REDACTED] launches sexy video." The petitioner submitted several articles that refer to the beneficiary group as a "crossover music band." Several clippings are solely about one performer in the group, rather than about the group as a whole. The petitioner has not established that the beneficiary group is a culturally unique entertainment group. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The second issue to be addressed in this proceeding is whether the petitioner established that all of the beneficiary's performances would be culturally unique. The director determined, and the AAO concurs, that the petitioner failed to establish that all of the beneficiary's performances would be culturally unique. The petitioner submitted a copy of its contract with the beneficiary group. The contract includes an itinerary, listing dates and venues; however, it does not specify the musical genre to be performed. On appeal, the petitioner submitted additional undated clippings from undetermined publications. The petitioner submitted copies of CD covers and labels; none of which mention the beneficiary group. The petitioner submitted three letters, including a previously submitted consultation. One letter from the Ministry of Community Development and Culture, Port-of-Spain, Trinidad and Tobago states that the beneficiary group is a local cross-over music band. The third letter from [REDACTED] states that the beneficiary group is a "cultural ambassador" and has been a participant in the annual Chutney Soca Monarch for the past eight years. The petitioner failed to explain the significance of the Chutney Soca Monarch. The evidence is insufficient to establish that all of the beneficiary's performances will be culturally unique.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would

constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1362. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.