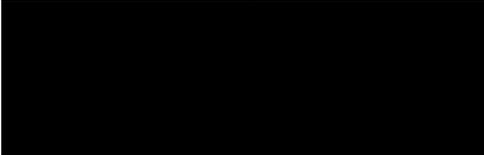




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

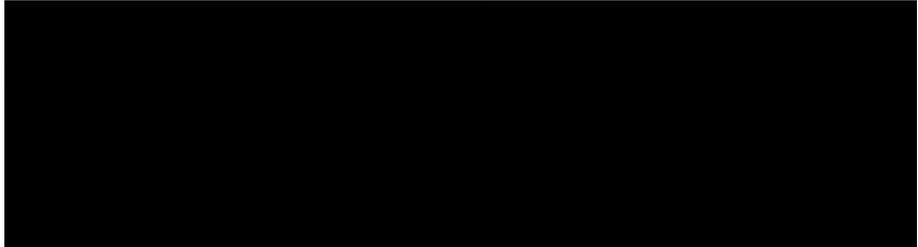
PUBLIC COPY



D9

FILE: EAC 05 146 50600 Office: VERMONT SERVICE CENTER Date: MAR 01 2006

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiaries as employment-based nonimmigrants pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), as an internationally recognized entertainment group, in order to employ the beneficiaries in the United States for a period of one year.

The director denied the petition, in part, finding that the petitioner failed to establish that seventy-five percent of the members of the group had a sustained and substantial relationship with the group for at least one year. The director denied the petition, in part, finding that the petitioner had failed to submit the required consultation.

On appeal, the petitioner submits additional evidence, asserting that it misunderstood the director's request for additional evidence.

Section 101(a)(15)(P)(i) of the Act provides classification to a qualified alien having a foreign residence which the alien has no intention of abandoning who performs with or is an integral or essential part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with the group over a period of at least one year.

The regulation at 8 C.F.R. § 214.2(p)(1) provides for classification of artists, athletes, and entertainers:

(i) *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.

P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform separate and apart from the group. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except for the limited circumstances provided for in 8 C.F.R. § 214.2(p)(4)(iii)(C)(2) relating to certain nationally known entertainment groups, it must be established that the group has been internationally recognized as outstanding for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of a one-year relationship with the group and must provide functions integral to the group's performance. *Id.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The first issue to be addressed in this proceeding is whether the petitioner established that seventy-five percent of the members of the group have had a sustained and substantial relationship with the group for at least one year.

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides P-1 classification to an alien who is coming temporarily to the United States:

* * *

(2) To perform with, or as an integral part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and

substantial period of time, and who has a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B) requires, in relevant part, that a petition for members of internationally recognized entertainment groups must be accompanied by:

- (1) Evidence that the group has been established and performing regularly for a period of at least 1 year;
- (2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group.

Initially, the petitioner submitted a letter dated February 20, 2005, addressed to Citizenship and Immigration Services (CIS) with the petition, listing the names of each group member and approximate dates when the members started with the group. The petitioner asserted in the letter that “[t]he band members have performed together regularly since the band was first started in 1987.” The petitioner also stated that another member, ██████████ had been a member “on and off for the last five years.” The petitioner did not respond to questions on the Form I-129 petition regarding when each member became employed by the group.

Finding the evidence insufficient, on May 6, 2005, the director requested that the petitioner submit additional evidence (RFE), specifically: “submit a statement listing each member of your entertainment group and *exact dates* which that member has been *employed on a regular basis* by your group. The petitioner responded to the RFE on May 16, 2005, but failed to submit a statement or any other evidence indicating the exact dates that each member had been employed by the group.

On appeal, the petitioner submits a statement listing each member of the beneficiary group and exact dates which each member had been employed by the group.¹ 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). The appeal will be adjudicated based on the record of proceeding before the director.

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(2) requires the petitioner to submit a list indicating the exact dates that each member had been employed by the group. The petitioner gave approximate dates of employment of the members of the group. The petitioner did not provide any evidence to substantiate the dates of employment. 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 evidence on the record is insufficient to establish that seventy-five percent of the members of the group had a sustained and substantial relationship with the group for at least one year.

The next issue to be addressed is whether the petitioner fulfilled the regulatory requirement to submit a written consultation from a labor organization that has expertise in the area of the alien’s entertainment field. 8 C.F.R.

¹ There is one discrepancy between the list submitted on appeal and the cover letter included with the petition. According to the cover letter, ██████████ has been with the beneficiary group since its inception in 1987. On appeal, the petitioner states that ██████████ has been a member of the beneficiary group since September 1983.

§ 214.2(p)(7)(ii). The petitioner failed to submit a consultation initially with the petition. In an RFE, the director specifically requested the petitioner to:

Please submit a written advisory opinion from an appropriate association or entity with expertise in the beneficiary's area of ability. The advisory opinion provided by the labor organization must evaluate and/or describe the alien's or group's ability and achievements in the field of endeavor, comment on whether the alien or group is internationally recognized for achievements, and state whether the services to be performed are appropriate for an internationally recognized alien or entertainment group. The written opinion shall contain a statement of facts that support the conclusion reach in the opinion and shall be signed by an authorized official of the group or organization.

Although the petitioner responded to the RFE, it failed to submit a written advisory opinion. On appeal, the petitioner submits a letter dated June 22, 2005 written by [REDACTED] Vice President, [REDACTED] asking CIS to approve the petition so that the beneficiary group could complete their newest CD. On appeal, the petitioner submits a letter written by [REDACTED]; a music expert certifying that the beneficiary group exists. 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. at 764; *Matter of Obaighena*, 19 I&N Dec. at 533. Even if we could consider the letters submitted on appeal, they would not overcome the director's objection to approving the petition because an appropriate association or entity did not write them nor do they address the issue of whether the beneficiary group is internationally recognized. The petitioner failed to submit a sufficient written advisory opinion.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary group. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. 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).

Beyond the director's decision, the petitioner failed to submit a complete itinerary, as required by the regulation at 8 C.F.R. § 214.2(p)(2)(ii)(C). The petitioner requested a duration of stay of one year; therefore, the petitioner is required to submit a complete itinerary for an entire year. The petitioner submitted an itinerary that was specific as to dates and places of performances for May 2005 to July 2005, vague as to July through December 2005 and nonexistent for January through May 2006. For this additional reason the petition may not be approved.

Further beyond the director's decision, the petitioner failed to establish that the beneficiary group is internationally recognized as required by the statute and regulations. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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, that burden has not been met.

ORDER: The appeal is dismissed.