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U.S. Citizenship
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FILE: WAC 06 800 12420 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner:
Beneficiary:



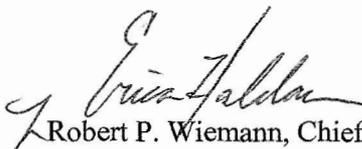
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

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, Chief
Administrative Appeals Office

DISCUSSION: The California 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 performers, teachers, or coaches under a commercial or noncommercial program that is culturally unique. Specifically, the petitioner, a for-profit enterprise engaged in entertainment promotion, seeks to temporarily employ the beneficiaries as musicians in the United States for a period of two months.

The director denied the petition, finding that the petitioner failed to submit a consultation from an appropriate labor organization. On appeal, the petitioner submits a consultation, and contends that it has satisfied the regulatory requirements.

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 . . . an alien who is coming solely to perform, teach or coach under a program that is culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(C) provides P-3 classification to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach or coach under a commercial or noncommercial program that is culturally unique. Furthermore, the regulation at 8 C.F.R. § 214.2(p)(2)(ii)(D) states that all petitions for P classification shall be accompanied by a written consultation from a labor organization.

The issue on appeal is whether the petitioner fulfilled the regulatory requirement to submit a written consultation from an appropriate labor organization. 8 C.F.R. § 214.2(p)(7)(v). Despite contending that a written consultation from an appropriate labor organization was submitted with the petition, the director determined, upon review of the record, that no such document had been submitted. Consequently, the petition was denied on October 13, 2006.

On appeal, the petitioner submits a letter dated November 7, 2006 by Jude Deronceray, host of the video show "Camera du Bonheur" and part of Tele Citronelle, the only Haitian television station in New Jersey currently broadcasting twenty-four hours a day, seven days a week. This letter, however, is unacceptable for purposes of this appeal. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A

visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petition in this matter was filed on September 22, 2006. According to the regulations at 8 C.F.R. §§ 214.2(p)(2)(ii)(D) and 214.2(p)(7)(i)(C), a written consultation from a labor organization should accompany the petition when the petition is filed.

Even if the AAO consider the letter submitted on appeal, it would not overcome the director's objection to approving the petition because an appropriate association or entity did not write the letter, nor does it evaluate the cultural uniqueness of the beneficiaries' skills, whether the events are cultural in nature, or whether the event or activity is appropriate for P-3 classification. The petitioner, therefore, failed to submit a sufficient written advisory opinion.

Beyond the director's decision, the petitioner failed to satisfy the evidentiary requirements for a culturally unique program. The petitioner did not submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the beneficiaries' skills in performing the unique or traditional art form as required by the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A). Furthermore, despite submitting numerous forms of printed materials advertising performances for the group, none of the printed material includes reviews in newspapers or other journals indicating that the group's performances are culturally unique. *See* 8 C.F.R. § 214.2(p)(6)(ii)(B). For this additional reason the petition may not be approved.

Finally, it should be noted that the beneficiaries of this petition include two essential support personnel; namely, [REDACTED] the band's manager, and [REDACTED] the sound engineer. Pursuant to 8 C.F.R. § 214.2(p)(2)(i), "Essential support personnel may not be included on the petition filed for the principal alien(s)." Therefore, the petitioner should have filed for these individuals separately. Even if the petitioner's appeal overcame the director's objections, the petition could not be approved for these individuals.

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). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.