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File: WAC 06 266 55302 Office: CALIFORNIA SERVICE CENTER Date: **DEC 16 2008**

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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

IN BEHALF OF PETITIONER:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded to the service center for additional action and a new decision.

The petitioner in this matter is an artists' management and public relations company. The beneficiaries are a violinist and a violist, and seek to enter the United States to join two other musicians in a string quartet. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiaries under section 101(a)(15)(P)(i)(b) of the Immigration and Nationality Act (the Act), as members of an internationally recognized entertainment group. The petitioner seeks to employ the beneficiaries for a period of approximately one year and eight months.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries would be entering the United States to join a foreign-based entertainment group, as contemplated by the statute and regulations. Specifically, the director concluded that since two members of the group were United States citizens, and the group the beneficiaries intend to join is a United States-based group, the P-1 classification is unavailable to the beneficiaries.

On appeal, counsel for the petitioner claims that the denial was arbitrary and capricious and not supported by the regulations or congressional intent. In support of these contentions, counsel submits a brief and additional evidence.

Section 101(a)(15)(P)(i)(b) 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.

Furthermore, 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 primary issue in this proceeding is whether the petitioner established that the beneficiaries are qualified for P-1 classification since they will be coming to the United States to join a United States based group.

The petitioner claims that the [REDACTED] is a U.S.-based group composed of four members: the beneficiaries and two U.S. citizens. On the O and P Classification Supplement to Form I-129, the petitioner indicates that the beneficiaries seek to come to the United States to rehearse, perform, and teach with their colleagues. A closer review of the record indicates that both beneficiaries previously entered the United States as music students, and attended the Juilliard School and the Manhattan School of Music, respectively. Moreover, an advertisement contained in the record indicates that the [REDACTED] was formed in 2005 and has served as the “student quartet-in-residence” for two well known artists, and recently made their Kennedy Center debut. Finally, the same advertisement indicates that in the fall of 2006, apparently in anticipation of the approval of this petition, the quartet will join the faculty of Stony Brook University as adjunct professors.

In response to a request for additional evidence issued on September 15, 2006, the petitioner confirmed that the [REDACTED] was an unincorporated U.S.-based group. Additionally, it confirmed that the group was established in January 2005, and provided a list of appearances at which the group performed in the United States.

In denying the petition on December 11, 2008, the director relied upon legacy Immigration and Naturalization Services correspondence from [REDACTED] former Nonimmigrant Branch Chief for the Office of Adjudications, entitled *Proper Utilization of the P-1 Nonimmigrant Classification*, CO 214.p.1-C, June 29, 1993, which provided in relevant part that the P visa classification was not intended for individual entertainers coming to the United States to join United States based entertainment groups, including but not limited to orchestras and symphonies.

On appeal, counsel submits a lengthy brief which notes that the regulations pertaining to P classification remain silent on this issue. Counsel contends that the director's decision constitutes an overly narrow interpretation of the regulations, and argues that the regulations impose no geographical restrictions on the entertainment group. Counsel continues by examining and interpreting the legislative history pertaining to this issue.

Upon review, the AAO concurs with counsel's contentions.

Counsel is correct in her assertion that the regulations do not address a foreign-based group in comparison to a United States based group. Moreover, the regulations set no standards and make no definitive conclusions with regard to the issue. A review of the specific language of the regulation at 8 C.F.R. § 214.2(p)(1) supports counsel's assertions that no such restrictions are in place. Specifically, the regulation requires the alien "to have a residence in a foreign country which he or she has no intention of abandoning." Moreover, the regulation authorizes the alien "to come to the United States temporarily to perform services for an employer or a sponsor." Finally, the intention of the regulation is for such an alien "to perform services as . . . [a] member of an internationally recognized entertainment group."

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

The director in this matter relied upon internal guidance set forth in the Bednarz memorandum, which suggested that Congress intended the P visa classification for foreign-based groups. However, as counsel points out on appeal, an advisory opinion issued by the Office of General Counsel three months after the Bednarz memorandum addressed this very issue, and clarified that "[a]n internationally recognized United States entertainment group **may** file a P-1 petition on behalf of an alien performer or entertainer coming to this country to provide functions integral to the performance of the group." *See* Genco Op. No. 93-76, p. 2 (Sept. 29, 1993) (Emphasis added).

We are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into

account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

Clearly, in this matter, the regulation in question makes no specific restriction with regard to whether the internationally recognized group in which the alien is coming to join be based in the United States or abroad. Instead, the primary requirement deserving of analysis in this matter is whether the group which the alien will join is *internationally recognized*.

Therefore, the director's decision pertaining to this issue will be withdrawn.

Nevertheless, the AAO notes additional deficiencies not addressed by the director that create a presumption of ineligibility in this matter. Specifically, 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 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)(3) defines international recognition as follows:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B) requires 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; and

(3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial amount of time. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field or by three of the following types of documentation:

(i) Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(ii) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(iii) Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(iv) Evidence that the group has a record of major commercial or critical successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;

(v) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(vi) Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field as evidenced by contracts or other reliable evidence.

As discussed above, the record indicates that the beneficiaries seek to come to the United States to rehearse, perform, and *teach* with their colleagues. A review of the record indicates that the beneficiaries were students as of 2005, and have served as the “student quartet-in-residence” for two well-known artists since its formation in 2005. Moreover, documentation submitted by the petitioner indicates that the group has appeared in various events across the United States; however, the record contains no evidence that the group has ever performed outside of the United States on a professional basis. This fact alone seems to contradict the definition of *internationally recognized*, which means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known *in more than one country*. See 8 C.F.R. § 214.2(p)(3) (emphasis added).

Additionally, there is no evidence that the group has satisfied other factors as set forth above. For example, there is no evidence that the group has commanded or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field, nor is there evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material. The record simply contains one advertisement prepared by the group’s management company, not by objective reviewers, and the advertisement claims that the group only recently made their debut at the Kennedy Center. Based on this statement, it appears at best that the [REDACTED] is a fledgling student group, and not an internationally recognized group as contemplated by the regulations.

Finally, the suggestion in the language of the petition that the beneficiaries will also teach or otherwise provide instruction, in addition to performing, while in the United States is contrary to the intention of the regulation.

The failure of the petitioner to establish that the group is internationally recognized, coupled with the fact that the beneficiaries may be entering the United States to teach as well as perform, requires further examination and analysis.

For the foregoing reasons, the decision of the director will be withdrawn and the petition remanded for additional action and entry of a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for additional action and a new decision, which if adverse shall be certified to the AAO for review.