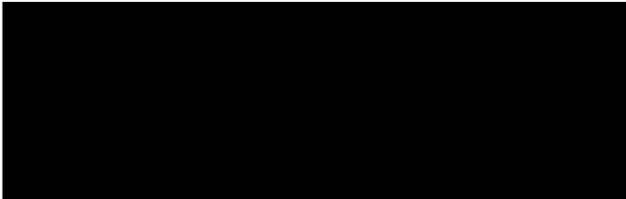


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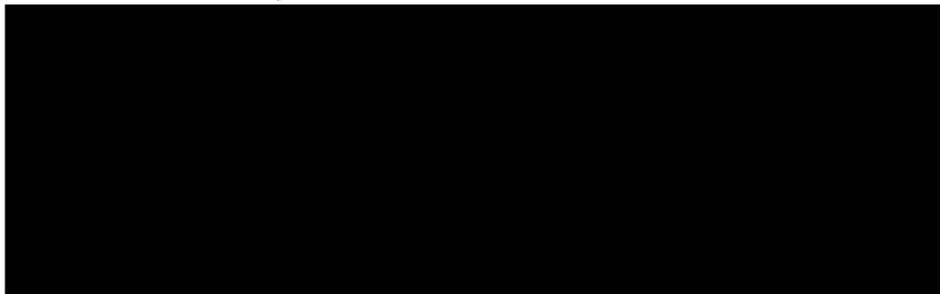
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FILE: EAC 04 096 53634 Office: VERMONT SERVICE CENTER Date: JUL 29 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is an entertainment agent. The beneficiaries comprise a 12-member musical entertainment group. 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), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of one year.

The director denied the petition, finding more than 25 percent of the performers in the group had been with the group for less than one year.

On appeal, the petitioner states, "all four members with less than a year in the group are essential and integral part for the performance of this group, they are less than a year since they had to be replaced for different reasons."

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)(B)(i) of the Act, 8 U.S.C. 1184(c)(4)(B)(i), provides that section 101(a)(15)(P)(i)(b) of the Act applies to an alien who:

- (I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,
- (II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and
- (III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

Section 214(c)(4)(B)(iii) of the Act provides the following:

- (I) The one-year relationship requirement of clause (i)(III) shall not apply to 25 percent of the performers and entertainers in a group.
- (II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

The sole issue to be addressed in this proceeding is whether the petitioner established that the beneficiaries meet the one-year relationship requirement set forth at section 214(c)(4)(B)(i)(II) of the Act.

The director determined, and the petitioner conceded, that four members of the twelve-member group had been part of the group for less than one year.

On appeal, the petitioner asserts that all four members are essential and integral to the group and notes that "they had to be replaced for different reasons." The petitioner states that group members occasionally "leave for personal reasons or just to join another group for better offer or many other reasons." The petitioner emphasizes that departed members need to be replaced in order "to keep a professional performance."

Upon review, the petitioner has failed to submit evidence relating to the basis for a waiver of the one-year relationship requirement. As stated above, in order for a musical group to qualify for P-1 classification, at least 75% of the group must have been performing together for at least one year as of the date the petition was filed. In this case only two-thirds of the group had been performing together for at least one year. The petitioner has not submitted documentary evidence to establish that one or more group members had to be replaced because of an illness or unanticipated and exigent circumstances, or that any of the aliens who have been with the group for less than one year have replaced an essential member of the group. Thus, the petitioner has failed to satisfy the waiver provision set forth at section 214(c)(4)(B)(iii)(II). 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)). Accordingly, the appeal will be dismissed.

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. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.