

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



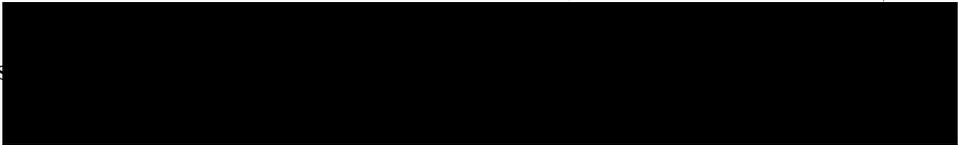
U.S. Citizenship
and Immigration
Services

Da



FILE: EAC 03 177 53938 Office: VERMONT SERVICE CENTER Date: AUG 12 2005

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.

Maig Johnson

S 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.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries are an internationally recognized entertainment group, and that at least 75 percent of the group has had a sustained and substantial relationship with the group.

On appeal, the petitioner submits additional documentation.

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.

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.

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 the beneficiaries are an internationally recognized group as defined by the statute and regulations.

Finding the initial evidence insufficient, the director requested the petitioner to submit additional evidence to establish that the beneficiaries are an internationally recognized group. The director specifically requested that the petitioner submit evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in the field or evidence satisfying at least three of the six criteria set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). The director reviewed the evidence and determined that the petitioner had failed to establish that the beneficiaries were an internationally recognized group. On appeal, the petitioner submits additional evidence.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that

clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The AAO will evaluate the evidence before the director. The evidence consists of the following:

1. An untranslated article.
2. An article captioned "Rocking Reggae Shakes Germany" printed in an undated publication called *The Gleaner*.
3. Three reviews printed in undated and unnamed publications.
4. An article titled "Eastern Beach Fest II this Sunday," in a weekly publication, *X News*, dated July 3-9, 2002.
5. A schedule of events for an undetermined venue.
6. A poster publicizing a fundraiser dated July 19, 2003 in which the beneficiary group is billed with 8 other entertainers.
7. Multiple flyers.
8. A letter dated January 15, 1992, written by [REDACTED] Communications Unit, Office of the Prime Minister of Jamaica, which states that the Killamanjaro (beneficiary group) is well-recognized locally and internationally.
9. An undated letter by [REDACTED] of the Sound System Association of Jamaica, attesting to "the authenticity of the group Killermanjaro [sic]."

The AAO will not consider untranslated material. *See* 8 C.F.R. § 103.2(b)(3). Similarly, undated and unnamed publications will not be considered because the AAO cannot discern whether or not it demonstrates sustained international recognition. Items 8 and 9 cannot be considered because they fail to conform to the required format in that the letters are not in the form of affidavits, nor is the expertise of the letters' authors and the manner in which the authors acquired such information provided. *See* 8 C.F.R. § 214.2(p)(2)(iii)(B). The evidence does not establish that the beneficiary group is internationally recognized as defined in the statute and regulations.

The next issue to be addressed is whether the petitioner established that at least 75 per cent of the group has had a sustained a substantial relationship with the group.

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.

On the Form I-129 petition, the petitioner indicated when four of the five beneficiaries joined the beneficiary group but was silent as to when the fifth joined. The petitioner submitted a letter dated December 12, 2003 from the Jamaica Association of Composers, Authors and Publishers, Ltd. indicating that Killamanjaro was comprised of four members. The petitioner submitted an agreement dated January 2, 2003 between the petitioner/promoter and the beneficiary, which indicates there are only four members in the beneficiary group. On appeal, the petitioner asserts that one of the beneficiaries, [REDACTED] is not a member of the Killamanjaro group, but that he has been performing with the group as a solo artist since 1995 on a regular basis.

Regardless of whether [REDACTED] is a member of the group or not, the petitioner must establish that he has performed and will perform with, or as an integral and essential part of the performance of, the entertainment group for a substantial period of time. *See* 8 C.F.R. § 214.2(p)(1)(ii)(A)(2), *supra*.

In any event, the petitioner failed to respond to the director's request for additional evidence, i.e., evidence that the entertainment group, under the name shown on the petition, has been established and performing regularly for a period of at least one year and submit a statement listing each *member* of the group and exact dates which that member has been employed on a regular basis by that group. The AAO will not consider the evidence submitted on appeal. *See Matter of Soriano, supra*.

The evidence before the director on this point consisted of the assertions of the petitioner on the Form I-129; a 1996 letter from the Jamaica Association of Composers, Authors, and Publishers; a 1996 letter from the Sound System Association of Jamaica; a 2002 letter from the Jamaica Ministry of Education, Youth and Culture; and approval notices dated August 2000, December 2001, and February 2003. There are discrepancies between the information provided on the Form I-129 petition and the 2002 approval notice as to the group's composition. According to the Form I-129 petition, [REDACTED] and [REDACTED] joined the group in 1998, but they are not listed on the 2002 approval notice. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This evidence is insufficient to establish that at least 75 percent of the group has a substantial relationship with the entertainment group.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has failed to meet that burden.

ORDER: The appeal is dismissed.