U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 260 51773 Office: VERMONT SERVICE CENTER Date: MAR 02 2006

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting 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 filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of the validity of the petition classifying the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an entertainer in a culturally unique program.

The director determined that the beneficiary has not been performing in a culturally unique program while in P-3 nonimmigrant status; hence, the petitioner failed to establish that the beneficiary seeks to enter the United States solely to perform as a culturally unique entertainer in a culturally unique program.

On appeal, counsel for the petitioner submits additional evidence.

The beneficiary is a 43-year old citizen of Uzbekistan. He last entered the United States as a P-1 nonimmigrant on June 14, 2002.

Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P), provides the terms under which an alien may seek classification as a P nonimmigrant provided the alien has a foreign residence which he or she has no intention of abandoning.

Section 101(a)(15)(P)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii), provides for classification of an alien who:

> (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
>
> (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary seeks to enter the United States solely to perform as a culturally unique entertainer under a culturally unique program.

Finding the initial evidence insufficient to establish eligibility, on January 1, 2004, the director requested, among other things, that the petitioner submit:

- Pay stubs for the beneficiary showing that the petitioner had paid the beneficiary during his previous P-3 period.
- Copies of contracts for performances past and future showing the beneficiary is contracted to perform.
- Brochures, programs, or other material showing the beneficiary has performed in productions while in P-3 status.

In response to the director's request for additional evidence, the petitioner provided Citizenship and Immigration Services (CIS) with the following:

- Copies of two checks dated December 2, 2003 and December 9, 2003, drawn on the petitioner's account made out to the beneficiary.

- A summary of an oral contract between the petitioner and the beneficiary for a period beginning October 1, 2003 and ending October 1, 2004.

- A summary of an oral contract between the petitioner and the beneficiary for a period beginning December 1, 2001 and ending December 1, 2002.

- A summary of an oral contract between the petitioner and the beneficiary for a period beginning December 1, 2000 and ending December 1, 2001.

- Two photographs of the beneficiary holding a bass guitar. The photographs are captioned with the names of the petitioner and the beneficiary.

- Several uncaptioned photographs of the beneficiary with a band.

The director determined that the evidence in the record was insufficient to establish that the beneficiary had been performing as a culturally unique entertainer solely in culturally unique programs.

The petitioner submitted copies of only two checks paid to the beneficiary and did not explain why additional evidence was unavailable. The petitioner submitted a translation of an article published in *The Art of Uzbekistan*, which states that under the beneficiary's direction, the group "Tashkent" has a lot of folk songs in its repertoire. It is noted that the petitioner failed to submit any reviews published in this country or any program brochures even though the beneficiary has been allegedly performing in the United States for three years. The evidence is insufficient to establish that the beneficiary has been performing as a culturally unique entertainer in culturally unique programs in the past and that the beneficiary will prospectively perform in culturally unique programs. Accordingly, the petition may not be approved.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.