identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D9

[redacted]

FILE: WAC 07 003 50862 Office: CALIFORNIA SERVICE CENTER Date: APR 16 2010

IN RE: Petitioner:
Beneficiaries: [redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the nonimmigrant petition. The director subsequently issued a notice of intent to revoke, and after reviewing the petitioner's rebuttal evidence, revoked the approval of the petition on January 27, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify 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), as an internationally-recognized entertainment group. The petitioner is self-described as a talent management business. It seeks to employ the beneficiaries, members of the Mexican band [redacted]' as musical recording artists/performers for a period of one year.[1]

The director initially approved the petition on October 17, 2006. Subsequently, the beneficiaries' applications for P-1 visas were denied at the U.S. Consulates in Tijuana and Ciudad Juarez, and the matter was returned to the service center for review and possible revocation. The director issued a notice of intent to revoke in accordance with 8 C.F.R. § 214.2(p)(10)(iii), noting that the beneficiaries' admitted during their visa interview that the group [redacted] has not yet performed under that name in Mexico or internationally. The director ultimately revoked the approval of the petition determining that the petitioner failed to establish that the beneficiaries' group has achieved international recognition and acclaim for outstanding achievement in the field. In denying the petition, the director observed that there was no evidence that the group has ever performed outside of Mexico.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner emphasizes that the petitioner has consistently stated that the group currently known as '[redacted]' was formerly known by the names '[redacted]' and '[redacted]' Counsel contends that "a personal performance in more than one country is not required" to satisfy the regulatory criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B). Counsel asserts that the group "has been heard in more than one country by virtue of their music being played on radio stations based in Mexico that reach into Central and North America."

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiaries are members of an internationally recognized entertainment group pursuant to the criteria and documentary requirements set forth at 8 C.F.R. § 214.2(p)(4)(iii). Accordingly, the director's decision to revoke the approval of the petition will be affirmed and the appeal will be dismissed.

I. The Law

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:

---

[1] The petitioner indicates that the remaining two band members are permanent residents of the United States and thus not included in the petition.

(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.

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides, in pertinent part, 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.

The regulation at 8 C.F.R. § 214.2(p)(10)(iii)(A) states that the Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition were not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or

(5) The approval of the petition violated paragraph (p) of this section or involved gross error.

II. Discussion

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a Notice of Intent to Revoke dated October 28, 2008, the petitioner's response to the notice of intent to revoke, the director's notice of revocation dated January 27, 2009, the petitioner's appeal, and additional evidence submitted in support of the appeal. [2]

The director ultimately denied the petition concluding that the petitioner failed to establish that the beneficiaries' group is internationally recognized. However, the director did not directly address whether he considered evidence submitted with respect to the group "[redacted]" only, or whether he considered evidence submitted to establish that the group achieved international recognition under the name [redacted] or "[redacted]" As most of the documentary evidence in the record refers to the beneficiaries' group by these older names, this discussion is critical in determining whether the petitioner submitted evidence to satisfy the regulatory criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*).

The petitioner filed the Form I-129 on September 28, 2006, and indicated at part 2 that the basis for classification is "Continuation of previously approved employment without change with the same employer." The petitioner stated that the beneficiaries were not in the United States.[3] On the O and P Classification Supplement to Form I-129, the petitioner stated that the beneficiaries have been performing together for almost two decades. With respect to the group name, the petitioner stated:

> The group was originally known as [redacted] and later changed their name to [redacted]." In November of 2003 the group for US marketing purposes became known as

The petitioner further stated:

> [redacted]" (the Band) will be performing live musical concerts in the United States pursuant to a concert agreement with [redacted] as the lead group for the world renown band "[redacted]" Will also be producing a series of albums pursuant to a recording agreement with [redacted]

In a letter dated September 15, 2006, the petitioner referred to the beneficiaries as members of "the highly renowned Mexican band [redacted]" The petitioner stated that the group will be the opening act for [redacted] during its tour of major U.S. cities, as well as "recording various albums and music videos" and participating in television, radio and print promotional opportunities in conjunction with the United States release of their recently completed album.

---

[2] The director's decision was erroneously dated January 27, 2009. The record indicates that the decision was issued on December 16, 2008.

[3] The beneficiaries' previous petition (WAC 05 221 50058) expired on August 15, 2006.

The petitioner further emphasized that the beneficiaries have a large following in Mexico and that their "records and music have received significant critical acclaim, not only individually, but also as part of the group now known as [redacted]

In support of the petition, the petitioner provided: (1) a copy of the contract for artistic representation between the petitioner and [redacted]," dated June 1, 2004; (2) an "exclusive recording agreement" dated November 17, 2003 between [redacted]., a California corporation, and [redacted]" as artist; and (3) a concert agreement dated January 15, 2005 between [redacted]. as promoter and [redacted] as manager, agent and legal representative for [redacted]

The petitioner submitted a copy of a compact disc for [redacted] and a promotional brochure stating that the group is "leaving in the past the phase of [redacted]'" The brochure describes [redacted] as a "new musical phase" and describes the band's "dreams to be able to hold a recognized position in the music industry." The promotional materials refer to a recording titled "Aqui Estoy!"

The petitioner also submitted: an undated promotional photograph of '[redacted]'; a May 1996 Mexican newspaper article regarding an upcoming performance by [redacted]; a February 1995 Mexican newspaper article regarding [redacted] and a March 1996 Mexican newspaper article regarding the release of an album by [redacted] The petitioner submitted photocopies of other articles and promotional materials for [redacted] and [redacted] but most of these materials were not dated. The few items that were dated were from 1993 and 1995.

The director initially approved the petition on October 17, 2006. The director issued a notice of intent to revoke the approval of the petition on October 28, 2008. In the notice of intent to revoke, the director stated:

> On July 5, 2007, the beneficiaries each applied for P-1 status at the United States Consulate General Ciudad Juarez. The beneficiaries applied for P-1 classification based on their affiliation with the musical group [redacted]
>
> Consular General Tijuana records indicate previous P-1 visas issued to the beneficiaries, however, Tijuana officers were unable to locate any information pertaining to a group known as [redacted], and the beneficiaries were unable to furnish any of the typically available documentation such as tour schedules, promotional materials, evidence of recording experience, etc. . . .
>
> During the course of an interview, the beneficiaries admitted that the group, [redacted] has not yet performed under that name either locally in Tijuana or internationally. Jorge [redacted] indicated that the brothers had performed together under the name "The [redacted]" but the investigator was subsequently unable to locate any information for a group under that name either. Furthermore, the beneficiary was unable to furnish evidence to support his statement.

The director's preliminary finding was that the facts as stated in the petition were not true and correct. *See* 8 C.F.R. § 214.2(p)(10)(iii)(A)(*2*). The petitioner was given 30 days to rebut the proposed grounds for revocation.

In response, the petitioner re-submitted a copy of the compact disc cover for [redacted] "released single CD," and provided eight testimonial letters. In a letter dated November 19, 2008, counsel stated:

> As to the allegation that the named Beneficiaries were unable to furnish any of the typically available documentation such as tour schedules, promotional materials, evidence of recording experience, etc. please be informed that said materials were in fact submitted with the filing of October 4, 2006 and same should be in the administrative file.

The contents of each testimonial letter are summarized in the director's notice of revocation, and will not be discussed in detail here. Briefly, all of the letter writers state that they have been familiar with the band [redacted] or '[redacted]' for many years and that they are aware of the band's recent name change to [redacted]." [redacted], publishing administrator for [redacted] indicates that "the distribution rights of [redacted]' the 'album' are in process of being negotiated with a major record company." He also notes that [redacted], originally scheduled to make its U.S. debut in 2007, would make its debut in the 2009 tour of [redacted]

The director revoked the approval of the petition, stating that "[g]iven the fact that the beneficiary group is scheduled to debut in the United States in 2009 and nothing in the record suggests that they have performed outside of Mexico, the petitioner has failed to demonstrate that the group has achieved international recognition and acclaim for outstanding achievements in the field."

On appeal, counsel for the petitioner states:

> The regulation at 8 C.F.R. Section 214.2(p)(4)(ii)(B)(1) provides the evidentiary basis on how it can be established that a group is internationally recognized and that a personal performance in more than one country is not required. The fact is the Beneficiaries music has been heard in more than one country by virtue of their music being played on radio stations based in Mexico that reach into Central and North America.
>
> The record is clear that the group consists of 4 principal members two of whom are permanent residents of the United States and 2 of whom are the subjects of this petition; that the group has performed together since 1985, originally under the name of [redacted]' then under the name of [redacted]' and for United States marketing purposes under the name [redacted]; and that the group are well known in Mexico and in other [S]panish speaking countries for their subtle tones and music they perform and therefore meet the requirements of being recognized as P-1B nonimmigrant workers.

Upon review, the AAO will not consider evidence submitted with respect to [redacted]' and '[redacted]' in determining whether the group [redacted]' is internationally recognized. While the AAO recognizes that the two beneficiaries and other band members have been performing together under different names for an extended period of time, the record indicates that the band changed its name to '[redacted] and signed contracts under this name nearly three years before the instant petition was filed, and the petition was filed specifically to allow the beneficiaries to record and perform under this name in the United States. Counsel even referred to the group as "the highly renowned Mexican band [redacted] Moreover, this is the second P-1

petition filed on behalf of the beneficiaries as members of this group. Accordingly, the AAO finds it reasonable to expect the petitioner to establish that the group [redacted]" can meet the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*). In reaching this conclusion, the AAO has also considered that there is no evidence in the record of recent performances by the beneficiaries under the name [redacted]" and no evidence that the group's adoption of the name "[redacted]" was publicized in any way. As noted above, the only dated published materials regarding [redacted] and [redacted] are from the period between 1993 and 1996, which suggest that the band enjoyed some measure of acclaim or recognition in Mexico or a region of Mexico at that time. While some of the testimonial letters suggest that the band has performed as '[redacted]' more recently, the statements are vague and are insufficient to establish that the band has enjoyed sustained acclaim at the international level. *See* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*2*). 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)).

Furthermore, while several individuals have written that they are aware of the band's name change from [redacted] to [redacted], there is no evidence that the name change was publicized in any way, such as through a press release or other published announcement, which raises further questions regarding the level of recognition sustained by [redacted] in recent years. If the petitioner had, for example, demonstrated through documentary evidence that [redacted] has enjoyed sustained international acclaim and has recently undergone a well-publicized name change, the AAO would likely consider evidence related to the band under its former name. Based on the minimal evidence in the record, the petitioner has not demonstrated the requisite sustained international recognition by the group under its previous name(s), nor justified why the group should be able to continue to rely on the reputation of the band under its former name three years after the name change.

Based on the foregoing discussion, the AAO will consider only evidence submitted regarding the group [redacted]' in determining whether the petitioner has satisfied the criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*).

The Beneficiaries' Eligibility under 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)

The petitioner has not submitted evidence that the group [redacted] has been nominated for or received significant international awards or prizes for outstanding achievements in its field. Therefore the petitioner must establish that the beneficiaries satisfy three of the evidentiary criteria set forth at 8 C.F.R. §§ 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*). Counsel correctly notes that there is no specific regulatory requirement that the group has performed in more than one country.

The petitioner has not established that the beneficiaries' group meets any of these criteria. The group has never performed together as [redacted] and therefore cannot establish that it has performed as a starring or leading entertainment group in productions or events which have a distinguished reputation, or that it has performed services as a leading or starring group for organizations and establishments that have a distinguished reputation. *See* 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*) and (*iii*).

As the group [redacted] has not performed together or released any music under this name, it cannot provide documentation of international recognition and acclaim for outstanding achievements as evidenced by reviews in major newspapers, trade journals, magazines, or other published material. *See* 8 C.F.R.

§ 214.2(p)(4)(iii)(B)(*3*)(*ii*). For the same reason, the petitioner cannot provide 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. 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*iv*). The beneficiaries' group has not yet performed together, nor has it released its compact disc, and thus it has no album or concert sales to report.

The criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*v*) requires the petitioner to submit evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. While the petitioner has submitted various testimonial letters, none of the persons who provided letters recognized the group's achievements in the field. [redacted] of Latin-Digital.com states that the group has "a great future" and "all the elements needed to occupy a very important place in the public's favorites." [redacted] recognizes the group's "great quality of music" and "originality in their style." She opines that the group "will impact the entertainment industry within the Regional Mexican Music." While these two individuals recognize the group's potential, their statements do not suggest that the group has already achieved any significant recognition for its achievements.

Finally, the petitioner has not established that the beneficiaries' group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other musical groups similarly situated in the field as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*vi*). The petitioner stated that the beneficiaries will be paid $1,250 per week; however, this information is not supported by any documentary evidence. The beneficiaries would receive a portion of royalties for any CDs sold, but it is not evident that they currently have a distributor for their CD. The group's concert agreement with [redacted] indicates that the group will be paid per event under the terms described in Attachment B to the agreement, but this attachment has not been provided. 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)).

Based on the foregoing discussion, the petitioner has not established that the beneficiaries' group is internationally recognized as that term is defined at 8 C.F.R. § 214.2(p)(3). Therefore, the petition approval was properly revoked.

Beyond the decision of the director, a remaining issue is whether the petitioner has satisfied the evidentiary criterion at 8 C.F.R. § 214.2(p)(2)(ii)(C), which requires the petitioner to provide an explanation of the nature of the events of activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities.

The only tour itineraries submitted are the 2006 and 2007 tour itineraries for the musical group [redacted]. While the petitioner submitted a "concert agreement" between the beneficiary group's agent and [redacted] as promoter, the agreement was dated January 15, 2005 and is not signed by the promoter. The beneficiaries were previously granted P-1 classification in August 2005, and, although they were previously granted P-1 visas, it is now known that their group has never performed with [redacted] under the terms of this concert agreement. [redacted] publishing administrator for [redacted]

states in a declaration dated November 18, 2008 that "[redacted] was originally scheduled to make its U.S. Debut in 2007"; however, this statement has not been reconciled with the January 2005 agreement, which indicates that dates had already been scheduled for the beneficiaries' group as of that date. Nor has the petitioner explained why the beneficiaries applied for P-1 visas in 2005 if they were not scheduled to perform in the United States until 2007. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on these facts, the AAO finds the list of tour dates for [redacted] and the concert agreement executed in 2005 to be insufficient for purposes of satisfying 8 C.F.R. § 214.2(p)(2)(ii)(C). Additional documentary evidence would be necessary to demonstrate that [redacted] intends to tour with the group [redacted] in the United States, such as advertisements or other promotional materials indicating that the groups would be performing together. For this additional reason, the petition cannot be approved.

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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO acknowledges that USCIS previously approved a P-1 petition filed by the petitioner on behalf of the instant beneficiaries. The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of the beneficiaries' qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Neither the director nor 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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown 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.

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. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.