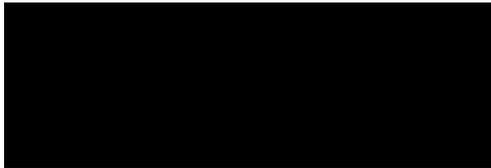




U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 207 50044 Office: VERMONT SERVICE CENTER Date: AUG 17 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



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.

*Maui Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a performing artist company. The beneficiary is an instrumental musician. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of the validity of a visa petition granting classification of 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 petitioner seeks a one-year extension.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is seeking to remain in the U.S. on a temporary basis. The director further determined that the beneficiary had violated her nonimmigrant status by working for employers in addition to the petitioner.

On appeal, the petitioner submits additional documentation.

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning 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 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 first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is an “alien having a foreign residence which the alien has no intention of abandoning who. . . seeks to enter the United States temporarily,” as required by the Act.

The director noted that the beneficiary initially entered the U.S. in P-3 nonimmigrant status on September 7, 2000, or three years prior to the filing of the extension petition. The director wrote “[t]he cultural uniqueness of the beneficiary’s performance has not been challenged. However, the P-3 is a temporary visa. In this case it appeared that the beneficiary had abandoned her residence abroad, has no intention of every returning to her country and that her salary in the U.S. is insufficient for her to maintain her stay without government assistance.”

The director requested that the petitioner submit additional evidence (RFE). In response to the RFE and on appeal, the petitioner submitted to Citizenship and Immigration Services (CIS) the following:

- A letter from the petitioner explaining how the beneficiary can sustain herself on a salary of \$300 per week without government assistance.
- A real estate certificate.
- A receipt for 5,000 Chinese dollars.
- A presale contract.
- A household registration dated 1998.
- The beneficiary's Form 1040 federal income tax return for 2002.
- A letter from the beneficiary's employer in China stating that it is holding open the beneficiary's job until December 31, 2004.
- A letter from the beneficiary's husband stating that he intends to remain in China where he is employed.

The director determined, and the AAO concurs, that the evidence is insufficient to establish that the beneficiary is an alien having a residence abroad that she has no intention of abandoning to stay in the U.S. on a temporary basis.

Counsel for the petitioner states that the beneficiary is married and that her husband resides in China but there is no other evidence establishing this. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is noted that the petitioner failed to submit a marriage certificate for the beneficiary. It is further noted that the beneficiary filed her Form 1040 federal income tax return as a single individual. 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). The real estate certificate indicates that the beneficiary owns an apartment at "Building [REDACTED] Yang District." It also indicates that the building is government owned. It is not clear whether the beneficiary owns or leases this property.

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<sup>1</sup> The petitioner submitted a translation captioned real estate certificate. Page two of the translation reads: "Belonging characteristic: Government owned. Using period: From November 17, 1998 to May 15, 2066."

The petitioner submitted a household registration dated 1998. A household registration<sup>2</sup> is not evidence of the beneficiary's intent to return to her country of citizenship.

The petitioner submitted a letter from the beneficiary's former Chinese employer stating that it is holding the beneficiary's job open until December 31, 2004. This decision post-dates December 31, 2004; hence, it is not evidence that the beneficiary has a job waiting in China.

The P-3 nonimmigrant visa is a temporary visa. The fact that a beneficiary has remained in this country for several years strongly suggests that she intends to make the U.S. her permanent home. The petitioner has not established that the beneficiary intends to make her stay in the U.S. a temporary one.

The second issue to be addressed in this proceeding is whether the petitioner established that the beneficiary has violated her nonimmigrant status by working for employers in addition to the petitioner. In response to an RFE, the petitioner submitted a letter that states that beneficiary performs for the petitioning organization and other nonprofit organizations that directly pay the beneficiary. The petitioner asserts that so long as the beneficiary is performing for other organizations with its permission, it is not in violation of her status. The petitioner's argument is not persuasive.

The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(B) states:

If the beneficiary . . . will work for more than one employer within the same time period, each employer must file a separate petition with [CIS] . . . unless an agent files the petition pursuant to paragraph (p)(2)(iv)(E) of this section.

The petitioner filed the extension petition as an employer, and not as an agent; therefore, it appears that the beneficiary violated her nonimmigrant visa status.

The petitioner noted that Citizenship and Immigration Services (CIS) approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory 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

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<sup>2</sup> The Provision of the People's Republic of China on Household Registration, promulgated in 1958, set the basic principal of stabilizing the permanent population and strictly controlling the flow of population. *China News and Report*. <http://www.china.org.cn/baodao/english/newsandreport/2002sep1/18-4.htm> [as accessed on 6/2/2005.]

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 the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5<sup>th</sup> Cir. 2004).

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 not met that burden.

**ORDER:** The appeal is dismissed.