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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

Dq

[redacted]

File: WAC 06 229 53697 Office: CALIFORNIA SERVICE CENTER Date: AUG 0 1 2008

IN RE: Petitioner: [redacted]
Beneficiaries:

Petition: Petition for a 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 acrobatic performance and entertainment production company. The beneficiaries are four Chinese acrobats who are allegedly former members of the Zhengzhou Acrobatic Troupe of China. The petitioner filed a Form I-129 (petition for a nonimmigrant worker) seeking P-1 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), as members of an internationally recognized entertainment group. The petitioner seeks to employ the beneficiaries temporarily in the United States for one year at a salary of $1,300 per week.

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.

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.

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 a group. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except as provided 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 in the discipline for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of 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.

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.

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.

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 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 first issue raised by the director is whether the petitioner established that the group had been established and performing together regularly for a period of at least one year as required by 8 C.F.R. § 214.2(p)(4)(iii)(B)(*1*). In the request for evidence issued on September 11, 2006, the director specifically requested that the petitioner submit evidence to demonstrate the beneficiaries had been established and were performing regularly together for a period of at least one year. Although the petitioner submitted a detailed response with several new documents, the petitioner failed to address this specific evidentiary deficiency noted by the director. 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).

The director denied the petition, citing this omission as a basis for the denial. On appeal, counsel submits a brief and additional evidence but fails to address this specific ground for denial set forth by the director. Upon review, the documentation in the record does not contain the required evidence that the beneficiaries as a group had been established and performing regularly together for a period of at least one year, as required by 8 C.F.R. § 214.2(p)(4)(iii)(B)(*1*). For this reason, the petition may not be approved.

The second issue in this matter is whether the petitioner submitted a statement listing each member of the group and the exact dates for which the group has employed each member on a regular basis, as required by 8 C.F.R. § 214.2(p)(4)(iii)(B)(*2*). In the request for evidence issued on September 11, 2006, the director also made a specific request for such a list detailing the dates of employment for each member of the group. However, the petitioner's response failed to include such a list. As stated above, 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).

This omission was the second basis for the director's denial, issued on September 9, 2006. As stated above, counsel's appeal, though detailed, fails to address this issue and fails to provide any details regarding the four beneficiaries. The petitioner, therefore, has failed to comply with the requirements set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(*2*). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner failed to provide an appropriate consultation from a labor organization having expertise in the alien's area of entertainment. The petitioner submitted a consultation from the American Guild of Variety Artists (AGVA) dated September 23, 2005. This consultation merely fills in the answer "Yes' to the following question: "AGVA consultation: Meets the current regulations in this category?"

Pursuant to the regulation at 8 C.F.R. § 214.2(p)(7)(ii), if the advisory opinion is favorable to the petitioner, it should describe the group's ability and achievements in the field of endeavor, comment on whether the alien group is internationally recognized for achievements, and state whether the services the group is coming to perform is are appropriate for an internationally recognized entertainment group. The consultation from AGVA, however, includes none of these criteria.

It is noted that the petitioner submitted a letter from Dreamcast Entertainment, Inc. dated September 15, 2006 in response to the request for evidence. Although this letter is referred to as "another consultation letter," this letter is written by the company with which the beneficiaries are contracted to perform while in the United States, and not a labor organization having expertise in the aliens' area of entertainment. Furthermore, the letter refers to only one of the four beneficiaries by name. Therefore, this letter also fails to satisfy the petitioner's burden to submit an appropriate consultation. For this additional reason, the petition may not 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 he or she shows 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.

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.