

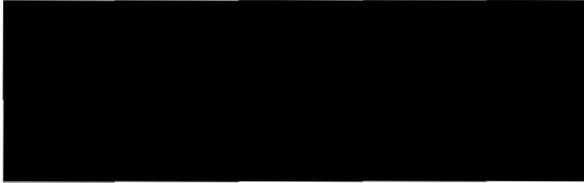
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



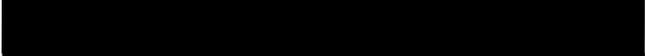
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

DA



FILE: WAC 06 166 50592 Office: CALIFORNIA SERVICE CENTER Date: **JUL 24 2008**

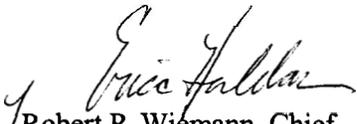
IN RE: Petitioner: 
Beneficiary: 

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)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner states that it is provider of professional tax and entertainment services, and claims to specifically engage in the production of videos. It seeks to classify the alien beneficiary as an essential support to a member of an internationally recognized entertainment group under section 101(a)(15)(P) of the Immigration and Nationality Act (the Act). The director denied the petition, finding that the petitioner had failed to submit an appropriate written consultation from a labor organization as required by the regulations. On appeal, the petitioner submitted a brief statement on Form I-290B and additional documentation.

P-1 classification is available to the members of an internationally recognized entertainment group. 8 C.F.R. 214.2(p)(1). P-1 classification is also available to "essential support aliens" based on a relationship with the P-1 entertainment group. 8 C.F.R. 214.2(p)(4)(iv)(A).

The term "essential support alien" is defined at 8 C.F.R. 214.2(p)(3) which states:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Moreover, the regulation at 8 C.F.R. 214.2(p)(4)(iv)(B) provides that a P-1 petition for an essential support alien must be accompanied by:

- (1) A consultation from a labor organization with expertise in the area of the alien's skill;
- (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
- (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The issue in this matter is whether the petitioner submitted an appropriate consultation as required by the regulations at 8 C.F.R. § 214.2(p)(2)(ii) and 8 C.F.R. § 214.2(p)(4)(iv)(B)(1).

In the request for additional evidence, issued on September 8, 2006, the director specifically asked the petitioner to submit a consultation from the Producers Guild of America. In a response dated December 3, 2006, the petitioner responded and advised that despite contacting both the Producers Guild of America and the Alliance of Motion Picture and Television Producers (AMPTP), they were unable to provide the necessary consultation due to "backlog." Additionally, the petitioner advised that although it attempted to obtain a consultation from the International Alliance of Theatrical Stage Employees, Moving Picture

Technicians, Artists and Allied Crafts of the United States (IATSE), it was advised that the beneficiary's occupation of video producer did not fall into IATSE's purview. The petitioner submitted a letter from IATSE, dated September 26, 2006, attesting to this information. In lieu of the required consultation, therefore, the petitioner submitted the beneficiary's certificate of training and experience with a certified English translation.

On January 4, 2007, the director denied the petition. The director noted that despite affording the petitioner the opportunity to submit the required consultation, it failed to comply with the request. Moreover, the director noted that the petitioner had failed to submit any documentation to corroborate the claim that the consultation could not be obtained as a result of "backlog."

On appeal, the petitioner filed Form I-290B and submits the following statement:

The Alliance of Motion Picture and Television Producers (AMPTP) has no record of receiving my petition. Therefore, I have to resubmit it. See attached letters. Besides, Producers Guild of America does not qualify producers of commercials and music videos. See attached printouts.

In support of the appeal, the petitioner submitted a list of frequently asked questions from the Producers Guild of America, indicating that producers of commercials and music videos do not qualify for membership. Also submitted were copies of the petitioner's letters to AMPTP, dated October 17, 2006 and January 22, 2007, regarding the status of its consultation request.

The petitioner's statement on appeal does not overcome the basis for the denial; namely, that it failed to submit an appropriate consultation as required by the regulations at 8 C.F.R. § 214.2(p)(2)(ii) and 8 C.F.R. § 214.2(p)(4)(iv)(B)(1). Moreover, it is noted in response to the request for evidence, the petitioner claimed that the AMPTP and the Producers Guild of America were backlogged and thus there was a delay in obtaining the necessary consultation. On appeal, however, the petitioner now contends that AMPTP never received the request, and that the Producers Guild of America was not the appropriate entity from which to obtain a consultation. 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).

The petitioner failed to satisfy the regulatory requirements set forth at 8 C.F.R. § 214.2(p)(7)(vi) by failing to provide the required consultation. 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, that burden has not been met.

Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.