

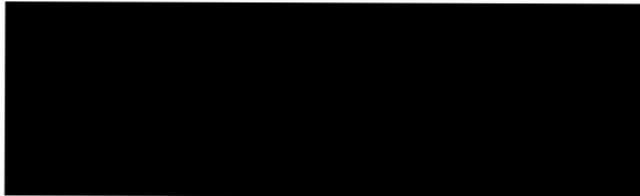
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U.S. Citizenship  
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**MAY 01 2009**

FILE: WAC 08 038 50550 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:

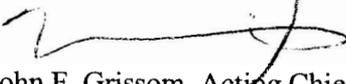


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

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.

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner states that it is a theatrical agency, producer and artist manager. It seeks to classify the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). Specifically, the petitioner seeks to continue to employ the beneficiary temporarily in the United States as a P-1 circus performer and requests that his status be extended for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit a written consultation from a labor organization as required by the regulations. In denying the petition, the director noted that the petitioner incorrectly claimed that the American Guild of Variety Artists (AGVA) does not provide consultations for circus performers.

On appeal, the petitioner objects to the denial of the petition, asserting that no labor consultation should be required for a P-1 petition extension. The petitioner asserts that the AGVA has no legal authority over the circus profession and that the beneficiary's petition "is being held hostage for a ransom of some Two Hundred Fifty Dollar (\$250.00) consultation fee to AGVA." Counsel emphasizes that it has been unable to obtain any legal confirmation from U.S. Citizenship and Immigration Services (USCIS) that AGVA has any legal authority to issue such consultations.

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:

- (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.

Section 214(c)(4)(D) of the Act provides that P-1 petitions shall be approved only after consultation in accordance with Section 214(c)(6)(A)(iii) of the Act, which requires the petitioner to submit an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment.

Title 8, Code of Federal Regulations § 214.2(p)(2)(ii)(D) also provides that all P nonimmigrant

petitions must be accompanied by a written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(7) details the requirements for the consultation:

(i) *General*

- (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.
- (B) . . . evidence of consultation shall be a written advisory opinion for an appropriate labor organization.
- (C) . . . the petitioner shall obtain a written advisory opinion from an appropriate labor organization. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which support the conclusion reached in the opinion. Advisory opinions must be submitted in writing and signed by an authorized official of the organization.
- (D) . . . written evidence of consultation shall be included in the record of every approved petition. Consultations are advisory and are not binding on the Service.

\* \* \*

- (F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

\* \* \*

- (iii) *Consultation requirements for P-1 circus personnel.* The advisory opinion provided by the labor organization should comment on whether the circus which will employ the alien has national recognition as well as any other aspect of the beneficiary's or beneficiaries' qualifications which the labor organization deems appropriate. If the advisory opinion is not favorable to the petitioner, it must set forth a specific statement of facts which support the conclusion reached in the opinion. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

The regulation at 8 C.F.R. § 214.2(p)(13) addresses the extension of visa petition validity as follows:

The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required *unless requested by the Director*. A petition extension may be filed only if the validity of the original petition has not expired.

(Emphasis added.)

The sole issue in this matter is whether the petitioner satisfied the labor consultation requirement set forth by the statute and regulations.

The petitioner filed the nonimmigrant petition on November 16, 2007. In a cover letter dated November 15, 2007, the petitioner noted that the beneficiary has been approved for P-1 classification a total of three times, and currently seeks an extension of status. In support of the petition, the petitioner submitted: a copy of the beneficiary's Form I-797B Approval Notice for a P-1 petition valid through November 30, 2007; a copy of its contract with the beneficiary to serve as his manager; a performer's engagement contract between the beneficiary and [REDACTED]; and promotional materials for [REDACTED].

On January 7, 2008, the director issued a request for additional evidence (RFE), in which she requested, *inter alia*, a consultation from a labor organization. The director advised that the labor organization must comment on whether the circus that will employ the beneficiary has national recognition as well as any other aspect of the beneficiary's qualifications that the labor organization deems appropriate. The director recommended that the petitioner obtain a consultation from AGVA. The petitioner was given until March 31, 2008 to submit its response to the RFE.

In a response dated February 25, 2008, the petitioner noted that most of the evidence requested "is customarily provided with the filing of the ORIGINAL Petition prior to the Beneficiary's entrance into the U.S." The petitioner asserted that neither USCIS nor legacy Immigration and Naturalization Service has ever requested or required "such extensive repetitious documentation" in support of an extension of a valid P-1 visa. The petitioner submitted a copy of the beneficiary's P-1 visa issued in 2003 and copies of approval notices for four previous P-1 petitions filed on the beneficiary's behalf by three different employers, the most recent being sponsored by the petitioner. The petitioner also provided information regarding upcoming events for Circus America.

On March 17, 2008, the petitioner submitted a request for premium processing service, and further responded to the RFE with a letter and additional documentary evidence. With respect to the consultation requirement, the petitioner stated the following:

[P]lease be advised that there is NO labor organization in America which has ANY collective bargaining agreement with ANY circus in the U.S. (See attached "B").

Governmental authorities (including the I.R.S.) have determined that such circus artists are NOT employees, but rather are "self-employed independent contractors" and/or "members of

a (family owned) partnership.” As such, they do NOT qualify for membership in any labor union. American circuses offer benefits to their performer through the circus membership in the national “Circus Producers Association” . . . . This association is the ONLY organization in the country which provides insurance coverages to circus artists.

(Emphasis in original.)

Counsel submitted an excerpt from Matthew Bender & Co., Inc.’s *Immigration and Nationality Law*, published in June 1995, with the following section highlighted:

The appropriate labor organization for circus-related consultations is the American Guild of Variety Artists. This is a somewhat controversial issue inasmuch as AGVA has not represented any circus personnel as collective bargaining agent in a decade, so there is little reason to suppose that AGVA has expertise in the field.

The director denied the petition on March 31, 2008, based on the petitioner’s failure to submit the requested consultation from a labor organization. In denying the petition, the director stated the following: “The petitioner stated that the AGVA does not and has not given consultations to circus performers. Such a response is not correct.”

The petitioner filed the appeal on April 8, 2008. In a letter dated April 7, 2008, counsel for the petitioner asserted that the director incorrectly indicated that the petitioner stated that the AGVA does not and has not given consultations to circus performers. The petitioner emphasizes that it in fact acknowledged that AGVA has provided consultations for circus performers in the past. The petitioner contends that its response to the RFE “establishes that it has been determined that AGVA is no longer a valid legal authority and there is currently NO labor organization with a collective bargaining agreement with ANY circus in the United States.”

The petitioner further contends that it has sought and received approval for “a multitude” of P-1 visa renewal extensions in recent years with the consultation requirements waived. Further, the petitioner asserts that no consultation was provided or required in support of the beneficiary’s most recent P-1 petition, filed by the petitioner in 2006.

Finally, counsel references the regulation at 8 C.F.R. § 214.2(p)(7)(i)(F) and asserts that the director should have waived the consultation requirement and rendered a decision based on the evidence of record.

The petitioner subsequently supplemented the record on October 17, 2008. The documentation submitted includes a letter dated May 1, 2008, in which the petitioner emphasized that the beneficiary has been **approved for P-1 classification a total of five times. The petitioner states that “if any labor union consultations were required to renew these previously approved P-1 visas and/or extensions, presumably the USCIS must have such union consultations in these files.”**

The petitioner further asserts the following:

[W]e strongly object to the implication that our current request for RENEWAL is being held hostage for a ransom of some Two Hundred Fifty Dollar (\$250.00) consultation fee to ADVA, a labor union organization that has NO LEGAL AUTHORITY over the operations, procedures or practices of our business – or our rights of confidentiality for those operations, procedures or practices – INCLUDING any terms of our talent contracts.

(Emphasis in original.)

The petitioner noted that it does not have a cordial relationship with AVGA and is reluctant to pay a consultation fee to that organization.

In addition, the petitioner submitted a letter dated September 30, 2008, in which it notes that “we have been unable to obtain any legal confirmation from USCIS that AVGA has any legal authority to issue such consultations.” The petitioner suggests that the fee associated with obtaining an AVGA consultation for every P-1 petition and extension it files are prohibitive, but notes that it did submit an AVGA consultation in support of a petition filed in August 2008 “under protest,” and received an approval in that case.

Finally, the petitioner states:

If USCIS continues to demand AVGA consultations to import NEW circus performers, herewith we request a ruling that such repitious [sic] union consultations NOT be required for EXTENSIONS by renewal of P-1 visas for which the original P-1 visas were issued . . .

(Emphasis in original.)

Upon review, the AAO concurs with the director’s decision. The petitioner has failed to establish that there is no appropriate labor organization for the beneficiary’s area of expertise, and therefore it does not meet the criteria for a waiver of the written consultation requirement pursuant to the regulation at 8 C.F.R. § 214.2(p)(7)(i)(F).

Notwithstanding the petitioner’s claims that the AVGA does not have authority to provide such consultations for circus personnel, the fact remains that the AVGA does regularly provide such consultations. The petitioner has conceded that it obtained an AVGA consultation for a circus performer as recently as August 2008. It appears that the petitioner was simply unwilling to pay the AVGA’s consultation fee in the instant matter and believes that it should not have to submit the consultation.

Furthermore, the AAO finds that it was appropriate for the director to request that the petitioner submit a consultation from a labor organization in this matter. The regulation at 8 C.F.R. § 214.2(p)(13) provides that supporting documents are not required in support of the extension *unless requested by the director*. Considering the amount of time that has lapsed since the original petition, it is entirely reasonable for the director to question whether the beneficiary continues to be engaged in the same work or whether the circus which will employ the alien continues to have national recognition. The director’s request for additional

evidence was well within her authority and the petitioner's refusal to comply with the request will not be excused. 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 AAO acknowledges that the beneficiary was previously the beneficiary of several P-1 petitions, and the petitioner's argument that if a labor consultation was required, then USCIS should have a copy of it in the beneficiary's files. It is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If a director requests additional evidence that a petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the records of separate nonimmigrant proceedings are not combined. If the petitioner would like the director to consider previously submitted materials, the petitioner should submit copies of those documents. USCIS does not consolidate previously filed petitions and does not have access to them at the time of adjudication. *See Hakimuddin v. DHS*, Slip Opinion, 2009 WL 497141 (S.D. Tex. Feb. 26, 2009).

As the petitioner has not submitted the required labor consultation or established that it qualifies for a waiver of this requirement, the AAO will affirm the director's decision and dismiss the appeal.

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.

**ORDER:** The appeal is dismissed.