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



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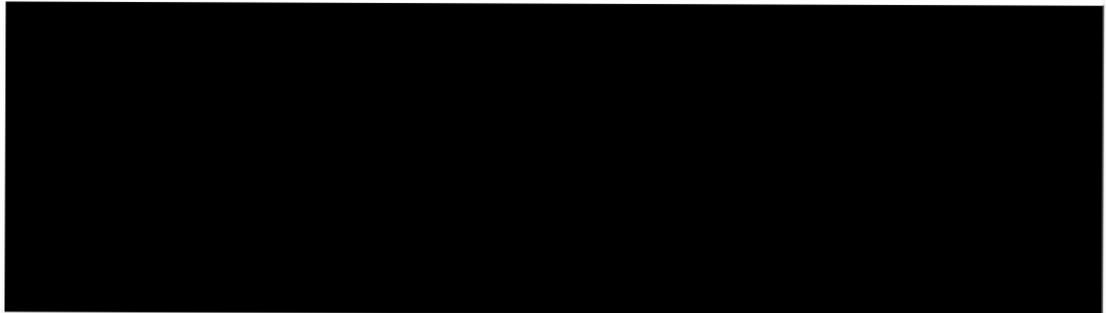


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IN RE:



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 appeal will be dismissed.

The petitioner is an entertainment company and the beneficiaries are described as “musicians/band and leader.” The petitioner seeks to classify the beneficiaries pursuant to 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, in order to employ them in the United States for a period of one year.

The director denied the petition, concluding that the petitioner had not established that all 14 of the beneficiaries have been involved in the groups’ performances overseas. The director also noted that the group appears to include both performers and support personnel, and the petitioner failed to identify the nature of each individual beneficiary’s contribution to the group. The director observed that the petitioner failed to fully respond to a request for evidence (RFE) issued on December 26, 2007, and in fact, appeared to have altered the RFE rather than comply with the requests contained therein.

On appeal, counsel for the petitioner submits additional information in an attempt to establish that each beneficiary is integral to the performance of the group and has a sustained relationship with the group.

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.

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

The regulation at 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.

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.

Finally, 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 primary issue to be addressed is whether the petitioner established that all of the beneficiaries perform with, or are an integral part of the performance of the group, [REDACTED]. The petitioner must establish that at least 75 percent of the group members have a sustained and substantial relationship with the group, and that all members perform functions integral to the performance of the group.

The petitioner filed the nonimmigrant petition on December 12, 2007. The petitioner indicated that the group of 14 beneficiaries include "musicians/band and leader." Where asked to indicate the duties to be performed, the petitioner stated "sing & the rest of the musicians play their own instrument." The petitioner indicated that the group, [REDACTED] was formed in 2003.

In support of the petition, the petitioner provided an engagement contract executed by the petitioner and the group, and provided a copy of each beneficiary's passport biographical information page. Each passport page contained a handwritten notation, mostly in Spanish, identifying the individual's role, as follows:

- [REDACTED] Manager
- [REDACTED] Vocalista y bailareria
- [REDACTED] Bailareria
- [REDACTED] Bailareria
- [REDACTED] Bailareria y coreografa
- [REDACTED] Cantante
- [REDACTED] Sonidista
- [REDACTED] Tamborero
- [REDACTED] Vajesta
- [REDACTED] Baleria
- [REDACTED] Primera Guitarra
- [REDACTED] 2da Guitarra
- [REDACTED] Guirero
- [REDACTED] Vocalista y bailareria

The petitioner's supporting evidence included a biography for the group, which stated that the group "is composed by six beautiful and talented young ladies." The biography names "[REDACTED]" and "[REDACTED]" as group members and notes that "[REDACTED]" is the group's manager. Newspaper articles promoting the group identified its members as "[REDACTED]" and "[REDACTED]"

The director issued a request for additional evidence (RFE) on December 26, 2007. The director instructed the petitioner to "provide a list of the group members with an indication of the instrument or vocal each will be involved with in the performances in the United States." The director also noted that the itinerary submitted by the petitioner included only one month of performances, and noted that approval of the petitioner would have to be limited to such dates if the petitioner did not provide a complete itinerary.

The petitioner responded to the RFE on January 2, 2008, with a new itinerary of performances scheduled for the months of March, April and May 2008. The petitioner did not provide the requested information regarding the individual contributions of the 14 beneficiaries.

It is noted that the petitioner responded to the RFE by fax. The petitioner's response included a copy of the RFE; however, the copy submitted did not include the last four lines of the original RFE, which included the request for a complete itinerary and the request for specific information regarding each group member.

The director denied the petition on January 15, 2008, concluding that the petitioner failed to establish that all of the beneficiaries are an integral and essential part of the performance of the group, and that at least 75 percent of the beneficiaries have had a sustained and substantial relationship with the group. The director noted the petitioner's failure to submit a complete response to the RFE and observed that it appeared that the RFE might have been altered by the petitioner.¹ The director observed, that based on the evidence submitted, it appears that there are only six performers in the group, not 14, and thus it appears that the petition includes both performers and support personnel, which is not permitted by the regulations. Further, the director noted that according to the information handwritten on the beneficiaries' passports, one of the beneficiaries is the group's manager. The director therefore concluded that the petition cannot be approved because it does not contain any information regarding which beneficiaries are a member of the performing group and which are support personnel.

On appeal, the petitioner apologizes for any errors and provides a list of job titles for all fourteen beneficiaries, along with the date they joined the group. Based on the list provided, the beneficiaries include six singers, six musicians, a sound engineer, and an "owner/founder/leader/coordinator." The petitioner indicates that all but two of the beneficiaries have been with the group since October 2003. The petitioner also submits copies of various certificates and awards received by the group, additional newspaper articles and advertisements for the group's performances, one of the group's promotional CDs, and a DVD.

Upon review, the AAO concurs with the director's decision to deny the petition. The petitioner has failed to establish that all fourteen beneficiaries are members of an internationally recognized entertainment group. The record indicates that the six singers are recognized by the name "[REDACTED]" However, based on the

¹ The director also acknowledged the possibility that the RFE was inadvertently incomplete by virtue of a technical problem with the fax transmission.

extremely limited evidence submitted, it must be concluded that the remaining eight beneficiaries, if qualified, would be more appropriately classified as P-1S essential support personnel pursuant to 8 C.F.R. 214.2(p)(4)(iv). There is no evidence in the record that the musicians are recognized as members of the group, as they are not mentioned in any of the supporting documentation. 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)). The list of job titles and dates of employment submitted on appeal is insufficient to meet the petitioner's burden of proof, as there is no independent documentation corroborating the claimed membership of the group beyond the six singers.

Furthermore, assuming *arguendo*, that the petitioner had established that the musicians are qualified for P-1 classification, the inclusion of the group's sound engineer in this petition was not appropriate. This beneficiary is clearly not a member of the entertainment group and therefore the director correctly determined that the petition is not approvable as filed.

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. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.