



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

Dg



FILE: WAC 09 019 50562 Office: CALIFORNIA SERVICE CENTER Date:

**NOV 25 2009**

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 and production company acting as agent for the two beneficiaries, who are dance partners. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking 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 an internationally recognized entertainment group, so that they may accept employment temporarily in the United States as dance performers.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiaries have been recognized internationally as outstanding in their discipline for a sustained and substantial period of time.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director overlooked previously submitted evidence and miscalculated the beneficiaries' proposed salaries, which counsel claims exceed the industry standard. Counsel submits a brief and additional documentary evidence in support of the appeal.

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.

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.

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 sole issue to be addressed in this proceeding is whether the petitioner established that the beneficiaries, as a duo, are an internationally recognized entertainment group. If the petitioner establishes that the beneficiaries satisfy the requirements set forth in the regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B), the petitioner establishes that the beneficiaries are internationally recognized.

Initially, the petitioner submitted the following evidence pertaining to the evidentiary requirements at 8 C.F.R. § 214.2(p)(4)(iii)(B):

- Wage information for "Entertainers and Performers, Sports and Related Workers, All Others" for the Las Vegas-Paradise, Nevada metropolitan area, as reported on the Foreign Labor Certification Data Center Online Wage Library. <<http://www.flcdatacenter.com>> (accessed on September 24, 2008).
- Professional resumes for both beneficiaries.

- A copy of a Certificate of Graduation awarded to the female beneficiary from the American Musical and Dramatic Academy in February 2000, for completion of "Professional Training: The Integrated Program."
- A letter dated October 17, 2008 from [REDACTED] for Entertainment – Activities at Melia Cozumel Resort in Mexico. [REDACTED] states that the beneficiaries worked at the resort as entertainers from March 2006 until March 2008, and commends their professionalism, dedication and talents. The letter does not bear [REDACTED] signature.
- A letter dated October 20, 2008 from the beneficiaries, who state they formed their duo in 2005 while working at the Palladium Vallarta Resort in Mexico in 2005, and subsequently worked together at the Melia Cozumel Resort in Mexico under a two-year contract.

The petitioner also submitted a copy of the beneficiaries' contract for their prospective United States employment in a resort and casino, and individual consultation letters from the Musicians Union of Las Vegas, Local 369, AFM.

On October 30, 2008, the director issued a request for additional evidence (RFE), instructing the petitioner to submit additional evidence to establish: (1) that the beneficiaries have been performing regularly together as a group for a period of at least one year; and (2) that the group has been internationally recognized in the discipline of dance for a sustained and substantial period of time, pursuant to the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3).

In a letter dated November 26, 2008, counsel for the petitioner stated that "the group has the required sustained international recognition," as "there is evidence showing the group has performed, and will perform, as a starring group in Mexico and as part of a variety show at the Venetian in Las Vegas." The evidence submitted in response to the RFE included the following:

- Letter from three employees of the Melia Cozumel Resort, who confirm that the beneficiaries worked there together for two years.
- An excerpt from the web site of the Melia Cozumel Resort which features a photograph of six costumed dancers. The petitioner attached a note identifying the beneficiaries in the group.
- A letter dated November 21, 2008 from [REDACTED] who states that she worked with the beneficiaries at the Palladium Hotel in Puerto Vallarta, Mexico, where she worked as a professional dancer, in 2005 and 2006.
- A letter dated November 20, 2008 from [REDACTED] for the "Decades" show at the Venetian Hotel in Las Vegas, who states that the beneficiaries' services are essential to the success of the show. He states that the duo has an "international appeal" and proficiency in a broad range of dance styles.

- A letter dated November 12, 2008 from [REDACTED] of Interactive Content for Televisa Interactive Media. [REDACTED] states that he has previously worked with one of the beneficiaries from 2003 until 2005, and notes that the beneficiary is "considered the best Michael Jackson impersonator in the city of Juarez."
- A letter dated November 6, 2008 from [REDACTED] production director with a Juarez television station, who states that one of the beneficiaries "performed his Michael Jackson impersonation on our TV program [REDACTED] in March 2005," and was invited to the program on many occasions.
- A letter dated November 18, 2008 from [REDACTED] director of Mochilas, a Mexican drug prevention program that operates a radio show. [REDACTED] states that the beneficiaries were invited to be guests on the radio show in March 2006 to share their experiences as performers, and notes that "in the broadcasting, we recognized them as talented artists who are growing in popularity outside the city."
- A letter dated November 25, 2008 from [REDACTED] a Canadian citizen, who states that she saw the beneficiaries perform at the Melia Resort in Cozumel, Mexico during her two-week stay there in December 2006. [REDACTED] commends their performances and talent.
- Advertising flyer for the beneficiaries' proposed U.S. performance as dancers supporting [REDACTED] "Decades," an upcoming free show at the La Scena Lounge, Venetian Resort-Hotel-Casino.
- Photographs of the beneficiaries performing together and with larger groups of dancers at the Meliz Cozumel Resort Theater in 2007 and 2008.
- DVDs containing video clips of the beneficiaries' performances.

The director denied the petition on December 12, 2008, concluding that the petitioner failed to establish that the beneficiaries have been internationally recognized in the discipline for a sustained and substantial period of time. The director noted that the petitioner failed to provide evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. The director determined that the petitioner also failed to provide evidence meeting at least three of the criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i) through (v). The director acknowledged the wage information provided by the petitioner, but found that the group's proffered salary of \$600 per week is actually lower than the typical wage for the type of work to be performed.

On appeal, counsel for the petitioner submits a brief and additional documentary evidence, which counsel states could not be obtained prior to the due date for the petitioner's RFE response. The additional evidence includes a letter from [REDACTED], graphic co-editor for the entertainment and sports section of El Diario newspaper. She states that she has met many "well known and talented people in sports and entertainment,"

including one of the beneficiaries, who is known as "the best best Michael Jackson impersonator" in Ciudad Juarez. [REDACTED] states that "he is a Juarez pride as he has been taking his talent to different states of Mexico, such as tourist areas in the Caribbean."

The petitioner also submits: (1) a certificate of excellence awarded to the group by the Melia Cozumel resort "in recognition of their extraordinary performance and valuable contribution as part of the artistic entertainment team"; (2) a certificate of recognition for participation in the above-referenced Mochilas radio broadcast in March 2006; (3) a letter from [REDACTED], a dancer who has worked extensively with one of the beneficiaries and highly recommends her; (4) a letter from [REDACTED] events coordinator for the town of Rimbey in Alberta, Canada, who confirms that the beneficiaries performed at the Rimbey Community Center on May 12, 2008; (5) a letter from [REDACTED], an "international musician" who previously worked at the Melia Resort in Cozumel, who states that the beneficiaries group "aided in attracting family audiences and tourists from many different countries looking to be entertained"; and (6) a flyer from the Melia Cozumel resort advertising the group's nightly shows.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiaries' group has been internationally recognized in the discipline for a sustained and substantial period of time.

The petitioner has neither claimed nor submitted evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. Therefore, the petitioner must establish that the beneficiary group is internationally recognized by submitting evidence satisfying three out of the six criteria outlined at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3).

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i), the petitioner must submit 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. The petitioner has not submitted evidence to meet this criterion. While it appears that the group was featured in one of the lounges at the Melia Cozumel resort, the petitioner has not submitted evidence that either their performances or the venue have a distinguished reputation in the discipline of dance. The petitioner has not submitted any critical reviews, publications, publicity releases, or contracts, or any other evidence to suggest that their performance was recognized beyond the guests of the resort and other attendees of their shows, as advertising for the show was limited to that audience. 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)).

In order to meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(ii), the petitioner must submit 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. The petitioner has not submitted evidence to meet this criterion. On appeal, the petitioner submits a review of the Melia Cozumel resort posted on a travel web site. The review is from a resort guest who states that she missed seeing the beneficiaries' group during her most recent visit to the resort. This informal review from a tourist does not meet the petitioner's burden to establish the group's international recognition and acclaim through published reviews.

To meet the third criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iii), the petitioner must submit 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. In this regard, the petitioner submitted a number of testimonials confirming the beneficiaries' leading role in the Melia Resort's entertainment program, but the evidence submitted does not establish that the group's former employer has a distinguished reputation in the discipline. Most of the testimonial evidence submitted comes directly from employees associated with the resort, and there is no objective evidence to support a finding that the beneficiaries' former employment at the resort established the group as renowned, leading, or well known in more than one country.

The petitioner has not submitted any evidence to establish 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, and therefore has not met the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iv). At most, it appears that the group was interviewed for one local radio program, and that one of the group members appeared on local television in Mexico prior to the group's formation. There is no evidence that the group has garnered any media attention at the regional, national or international level.

In order to meet the fifth criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(v), the petitioner must provide evidence 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. While the petitioner has submitted various reference letters attesting to the beneficiaries' talent as performers, both individually and as a duo, the petitioner has not provided evidence of the group's achievements from recognized experts, critics, or other organizations. The letters also do not speak to the group's specific achievements in the field. The fact that the beneficiaries have completed training in dance, worked steadily as dancers and performed in more than one country does not establish that the beneficiaries are an "internationally recognized" group. As discussed above, the term 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. Here, there is no evidence that the group is well-known or leading in the field.

The sixth and final criterion requires the petitioner to submit evidence to establish that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services compared to other groups similarly situated in the field as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(vi). The petitioner has not submitted evidence to establish the salary or remuneration received by the group in the past. The petitioner stated on Form I-129 that the beneficiaries will work 20 hours per week, and the submitted contract indicates that the beneficiaries will receive weekly payments of \$600.00. It is not entirely clear from the contract whether this amount would be paid to each beneficiary, or divided between them. Therefore, the wage would be either \$15.00 per hour or \$30.00 per hour. The wage information submitted at the time of filing indicates that entertainers and performers working in Las Vegas typically receive between \$21.00 and \$40.00 per hour. The AAO notes that the director erroneously observed in the notice of decision that the beneficiaries would earn only \$10.00 per hour.

On appeal, counsel asserts that the original contract provided that the beneficiaries be paid \$30 per hour each. Counsel further states that the offer has subsequently been increased to \$800 per week, "before the denial but after the opportunity to provide this documentation in the request for evidence." Counsel states that the beneficiaries will be paid \$40.00 per hour.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, the AAO need not consider any changes in conditions of employment which occurred subsequent to the filing of the petition. Regardless of whether the individual beneficiaries will earn \$30.00 or \$40.00 per hour, the petitioner has not submitted evidence to support counsel's claim that "the performance group will be paid a high salary that exceeds industry standards for these types of variety shows." Rather, the evidence submitted shows that the proffered wage falls within the mid-range of the \$21.00 to \$40.00 hourly wage typically paid to entertainers employed in Las Vegas. The petitioner has not met this criterion.

In summary, the evidence submitted by the petitioner fails to meet at least three of the six criteria listed in the regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). Therefore, the petitioner failed to establish that the group has achieved sustained international recognition in the discipline of dance. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proof remains entirely 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.