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



U.S. Citizenship
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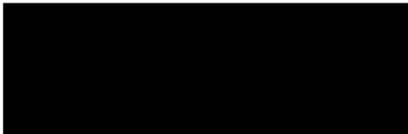
FILE: WAC 09 053 50853 Office: CALIFORNIA SERVICE CENTER Date: OCT 22 2009

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for 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:



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 or reopen, 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 and is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiaries as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P). The petitioner is self-described as an amusement and entertainment company. It seeks to temporarily employ the beneficiaries to provide essential support services to a P-1 entertainment group, the Family [REDACTED], for a period of one year.

The director denied the petition on April 10, 2009, concluding that the beneficiaries do not qualify as an essential support alien in accordance with the regulations at 8 C.F.R. § 214.2(p)(3). Specifically, the director determined that the petitioner failed to establish that the beneficiaries have previously performed as essential support personnel for the principal aliens.

Counsel for the petitioner filed the instant appeal on May 6, 2009. Where asked to briefly state the reason for appeal on the Form I-290B, Notice of Appeal or Motion, counsel states:

. . . [T]he Petitioner, through counsel will provide further evidence in support of the national standing of the Petitioner within the circus and entertainment industry based on the recognized reputation of the Petitioner both in the US and abroad, the level of talent exhibited to the public over the years and the show performance quality. When taken into consideration, this additional evidence with the information and supporting documentation already on file will support a finding that the Petitioner's circus show does rise to the level of a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus consistent with INA 214(c)(4)(B)(iv) and thereby establishing an exception to the requirement that the alien beneficiaries (or circus personnel...who constitute an integral and essential part of the performance of such circus or circus group) are internationally recognized as noted in INA 214(c)(4)(B)(i).

Counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days. On June 4, 2009, counsel submitted a CD-ROM which contains a documentary featuring "the history, traditions, family values and continuing success of [the petitioning organization]." Counsel states that the documentary will "leave no doubt about the national standing the Petitioner has achieved." Counsel did not indicate that any additional evidence is forthcoming, and the record will be considered complete.

The regulation at 8 C.F.R. § 214.2(p)(3), provides, in pertinent part:

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.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that beneficiary is qualified to perform the services and the services cannot be readily performed by United States workers.

The director denied the petition based on the petitioner's failure to submit sufficient evidence to establish the beneficiaries' prior essentiality, critical skills and experience with the principal P-1 aliens, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification. Specifically, the director found that the petitioner submitted no evidence of the beneficiaries' prior relationship with the principal P-1 entertainment group in an essential support role, and in fact, failed to indicate that the beneficiaries had ever worked for the principal aliens in any capacity. The director therefore concluded that the petitioner did not demonstrate that the beneficiaries have performed as essential support personnel for the principal P-1 group or that they are critical or essential to the group's performance.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's brief statement on appeal does not address the director's findings and therefore does not identify any erroneous conclusion of law or statement of fact on the part of the director. Rather, counsel's assertions suggest that counsel is under the impression that the petition was denied based on the petitioner's failure to establish that its circus performances are nationally recognized. As discussed above, the sole ground for denial was the petitioner's failure to establish the beneficiaries' prior essential support relationship with the principal P-1 entertainment group.

Based on the foregoing, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiaries qualify as essential support aliens as defined at 8 C.F.R. § 214.2(p)(3). The evidence of record does not establish that the beneficiaries have any prior experience providing essential support services to the principal P-1 aliens, and the petitioner has not provided any evidence on appeal to overcome this deficiency.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.