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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 and Immigration Services

[redacted]

D9

FILE: WAC 10 072 50965 Office: CALIFORNIA SERVICE CENTER Date: APR - 1 2010

IN RE: Petitioner:
Beneficiaries: [redacted]

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

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, recommended that the nonimmigrant visa petition be approved with validity dates of February 11, 2010 through February 14, 2010. The director certified her decision to the Administrative Appeals Office (AAO) for review, pursuant to 8 C.F.R. §103.4(a)(5). The AAO will affirm the director's decision to approve the petition and amend the validity period of the petition.

The petitioner, an entertainment agency, filed the nonimmigrant petition seeking classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as entertainers in a culturally unique program. The beneficiaries are Irish folk musicians comprising the group known as [redacted] The petitioner seeks classification of the beneficiaries as a P-3 entertainment group for the period of February 1, 2010 until March 29, 2011.[1]

On February 11, 2010, the director recommended approval of the petition, concluding that the petitioner established that the performance of the beneficiaries is culturally unique. The director recommended approval of the petition for a shortened validity period of four days, from February 11, 2010 until February 14, 2010.[2] The director determined that the petitioner's itinerary, which includes 17 concerts scheduled between February 7, 2010 and March 26, 2011, actually consists of three separate tours. The director granted approval for the length of the "first tour" and observed that the petitioner may file separate petitions for additional tours.

Because the petition involves an unusually complex or novel issue, the director certified her decision to the AAO and advised the petitioner that it had 30 days in which to submit a brief or other written statement to the AAO. The petitioner has not submitted a brief as of this date and the record will be considered complete.

I. The Law

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

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[1] Pursuant to the regulation at 8 C.F.R. § 214.2(p)(8)(iii)(C), an approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) or (iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity or performance for which the P-2 or P-3 alien is admitted, not to exceed one year.

[2] Although the petitioner indicated on Form I-129 that it was filing a "new petition" and requested a validity period commencing on February 1, 2010, the petitioner later noted that the beneficiaries' prior approved P-3 petition (WAC 09 079 51242), remained valid until February 28, 2010.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

> *Culturally unique* means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

(A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

(A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written consultation from a labor organization.

II. Discussion

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a request for additional evidence (RFE) dated January 27, 2010, the petitioner's response to the RFE, and the director's certified decision dated February 11, 2010. The record contains a written consultation from an appropriate labor organization, written contracts between the petitioner and the beneficiaries, written contracts between the beneficiaries and the venues which will host their performances, and an itinerary for the entertainment group, as required by 8 C.F.R. 214.2(p)(2)(ii).

The substantive issues considered by the director were: (1) whether the petitioner established that the beneficiaries' performance is culturally unique; and (2) whether the performances scheduled per the beneficiaries' itinerary can be considered a single "event."

A. "Culturally Unique"

The director determined that the petitioner submitted sufficient evidence to satisfy the criteria at 8 C.F.R. § 214.2(p)(6)(ii)(B), noting that the petitioner submitted several reviews of the group's performances which appeared in various newspapers and publicity materials. The submitted articles and reviews establish that the group is an accomplished traditional Irish folk band whose most recent album comprised "10 songs . . .from the traditional or folk canon."

The director further found sufficient evidence to establish that all of the scheduled performances or presentations will be culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). The director observed that the beneficiaries' past and scheduled performances have taken place at universities, Celtic festivals, Irish cultural centers, and other venues which typically showcase traditional or culturally unique music. Therefore, the director concluded that the group's performances will take place at cultural events or will be cultural events based on the group's performances.

The AAO concurs with the director's determination. The petitioner has laid a more than adequate evidentiary foundation to support a finding that the beneficiaries' performances are representative of traditional Irish culture, specifically, traditional forms of Irish musical expression. Accordingly, the group's musical performance falls within the regulatory definition of culturally unique. Further, the evidence of record establishes that the group's planned performances will be culturally unique events. The group will be performing at educational institutions, a Celtic festival, an Institute of Musical Traditions, a School of Folk Music, and other venues which would reasonably accommodate the petitioner's culturally unique performances.

Therefore, the petitioner has satisfied the regulatory criteria at 8 C.F.R. § 214.2(p)(6)(ii)(B) and (C) and has established that the beneficiary group's performance is culturally unique and that it seeks to enter the United States solely to participate in cultural events which will further the understanding of its art form.

B. Interpretation of "Event" and Determination of Petition Validity Dates

The remaining issue in this matter is whether the petition can be approved for the requested validity dates of February 1, 2010 until March 29, 2011.

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

> *Competition, event or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, even or performance, and stopovers which are incidental and/or related to the activity. An athletic activity or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

In relevant part, the regulation at 8 C.F.R. § 214.2(p)(8)(ii) states that procedures for recording the validity date of petitions are:

> (B) If a new P petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall generally show a validity period commencing with the date of approval and ending with the date required by the petitioner, not to exceed the limit specified in paragraph (p)(8)(iii) of this section or other Service policy.

The regulation at 8 C.F.R. § 214.2(p)(8)(iii) states that the approval period of a P petition shall conform to the limits prescribed as follows:

> (C) *P-2 and P-3 petitions for artists or entertainers.* An approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) or (iii) of the Act shall be valid for a period of time determined by the Director to be necessary to complete the event, activity or performance for which the P-2 or P-3 alien is admitted, not to exceed 1 year.

The petitioner submitted a tour itinerary at the time of filing which includes: eight (8) performances scheduled between February 7, 2010 and February 14, 2010; six (6) performances scheduled between May 14, 2010 and May 22, 2010; one three-day performance event scheduled between September 24, 2010 and September 26, 2010; a performance scheduled for February 26, 2011; and a performance scheduled for March 26, 2011.

In the request for evidence issued on January 27, 2010, the director requested, *inter alia,* "an explanation of the group's events between February 24, 2010 and May 14, 2010 as well as between May 22, 2010 and September 24, 2010."

The petitioner responded in a letter dated January 27, 2010, as follows:

> During the period between February 24, 2010 and May 14, 2010, and during the period between May 22, 2010 and September 24, 2010, the artists will return to their residence in Ireland, where they have school-age children as well as professional/artistic obligations. This multiple-entry situation is in keeping with previous visas granted to the artists. . . .

The petitioner also indicated that it continues to pursue additional performing opportunities for the beneficiaries that would occur between the first and last performances listed on the itinerary.

On February 11, 2009, the director recommended that the petition be approved with a validity period of February 11, 2010 until February 14, 2010. The director explained her reasoning for the shortened period of approval as follows:

> The itinerary has two extended period between February 15, 2010 and May 13, 2010 and May 23, 2010 and September 23, 2010 with no scheduled performances. The petitioner states that during these periods the group will return to their home country to care for their children and to address professional and artistic obligations. The petitioner also provided several previous petition file numbers which the group was given their requested approval period with similar periods of performances in the United States. However, without the previous petitions present, USCIS is unable to determine if such periods were present in previous petitions. Regardless, the instant petition will be limited to an approval from this date until February 14, 2009. The reason for the shortened approval is that the group will be returning to their home country for a period of three months from February 25, 2010 and May 13, 2010. During this extended period the group will return to their normal daily lives in their home country. The group will not be engaged in short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, or stopovers which are incidental and/or related to the activity as allowed under the definition of event under 8 C.F.R. 214.2(p)(3). It is evident to USCIS that the group's itinerary includes three separate tours and USCIS has granted approval for the length of the first tour. As such, the petitioner may file a separate petition of each of the group's additional tours.

The issue before the AAO is whether the beneficiaries' clusters of performances scheduled over an approximately one-year period should be considered separate "events," with each "event" requiring the filing of a new P-3 petition.

Upon review, the AAO disagrees with the director's determination that the petition can only be granted for the validity period from February 11, 2010 until February 14, 2010.

The validity dates for the P-1 visa classification are defined by the specific period of time required to perform or participate in a specific event or events. Here, the petitioner has identified the beneficiary group's "event" as a tour with 17 scheduled performances occurring between February 2010 and March 2011, and additional performances which may be added to the itinerary within this timeframe. The statute and regulation allow for an approval of a P-3 petition for a period of time necessary to complete the event, activity or performance for which the beneficiaries are admitted, not to exceed one year. 8 C.F.R. § 214.2(p)(8)(iii)(C). In determining the appropriate validity period, USCIS evaluates the totality of the evidence submitted with regards to the pertinent statute and regulations to determine if the activities on the itinerary are related in such a way that they could be considered one event.

The director determined that the beneficiaries' tour is actually three separate tours, but offered no factual support for this determination, nor any statutory or regulatory authority finding that each portion of the tour is a discrete "event" that would require the filing of a new petition.

The definition of "competition, event, or performance" at 8 C.F.R. § 214.2(p)(3) indicates that an "entertainment event could include an entire season of performances," or a "group of related activities." Here, the evidence indicates that the beneficiary group will be touring over a period 13 or more months, with three "clusters" of U.S. performances currently scheduled for February, May and September 2010, isolated performances in February and March 2011, and additional performances that may be added a later date. The AAO finds this scenario, in which different legs of a lengthy tour have been scheduled throughout the year, to fall within the definition of an "event" as "an entire season of performances" or a "group of related activities."

The director instead chose to emphasize the fact that the definition of "competition, event or performance" specifically mentions activities such as "short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, and stopovers which are incidental and/or related to the activity." The director reasoned that because the instant beneficiaries intend to spend several months at a time outside the United States during the requested period of employment, their activities do not fall within the regulatory confines of an "event."

The AAO disagrees with this interpretation. The regulatory definition of "competition, event, or performance," illustrates the types of ancillary activities that would be acceptable for a nonimmigrant who is *in the United States* pursuant to an approved P-1 petition. For example, such activities may allow a P-1 athlete to enter the United States prior to a competition for training, or allow an entertainment group to enter the United States prior to a performance for rehearsals. The AAO can find no statutory or regulatory authority for the director's conclusion that traveling outside the United States during a gap or break in a group's U.S. itinerary would indicate the end of one "event," with any subsequent performance or group of performances in the United States constituting a "new" event requiring the filing of a new petition.

The AAO finds that this flexible interpretation of an "event" is supported by the regulations for filing amended P petitions at 8 C.F.R. § 214.2(p)(2)(iv)(D), which states, in pertinent part, that "[a] petitioner may add additional, similar or comparable performance, engagements or competitions during the validity period of the petition without filing an amended petition." This portion of the regulation would be rendered meaningless if USCIS restricted the dates of approval to those exact dates on which the beneficiary group has a performance scheduled.

While the director's concerns about unscheduled periods during the itinerary are valid, it is more appropriate to address this issue in the context of an extension petition rather than arbitrarily dividing the requested period of stay into shorter events. In the supplemental information to the final O and P nonimmigrant visa rule, the INS refused to allow a period of stay longer than one year for the P-3 classification. 59 Fed. Reg. 41818, 41826 (Aug. 15, 1994). The INS noted that "[t]he 1-year period for an extension is a device devised by the Service to ensure that the alien beneficiaries are complying with the terms of the initial petition." *Id.*

To address the concerns in the context of an extension petition, the director may reasonably examine whether the beneficiary has complied with the terms of the previous approval or used the previous admission to

freelance or seek unauthorized employment in competition with U.S. entertainers. *See* 59 Fed. Reg. at 41826. Admission as a P nonimmigrant is limited to a specific event or events. If the beneficiary has violated the terms of the previous approval, or otherwise failed to maintain the previously accorded status, then the extension of stay may not be approved. 8 C.F.R. § 214.1(c)(4).

Therefore, based on the foregoing discussion, the AAO orders that the petition be approved with an amended validity dates of March 1, 2010 until February 28, 2011.[3]

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. § 1362. Here, that burden has been met.

ORDER: The petition is approved with a validity period of March 1, 2010 until February 28, 2011.

[3] The dates requested by the petitioner, February 1, 2010 until March 29, 2011, would exceed the maximum one-year period of approval set forth at 8 C.F.R. § 214.2(p)(8)(iii)(C). However, the AAO has taken into account the fact that the beneficiaries had an approved P-3 petition filed by the instant petitioner which was valid through February 28, 2010, and the petitioner's acknowledgement that it erred by not requesting a later approval date for the instant petition.