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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**

89

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the petition for further action and entry of a new decision.

The petitioner filed the nonimmigrant petition seeking 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), as a member of an internationally-recognized entertainment group. The petitioner is self-described as a Chinese martial arts production company. It seeks to employ the beneficiary as a martial artist for a period of one year as a member of the group known as ' [REDACTED]'. The petitioner has employed the beneficiary in P-1 status since 2007 and now seeks to extend his status.

The director denied the petition concluding that the petitioner did not establish that the sole beneficiary will be performing in the United States as a member of a group. The director acknowledged that the beneficiary was previously accorded P-1 status as a member of an entertainment group, but noted that the instant petition identifies the beneficiary as the only group member. The director observed that the other members of the group may no longer be in the United States and emphasized that the beneficiary cannot be granted P-1 status to perform services separate and apart from the group.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the internationally-recognized entertainment group, Lianshan Kung Fu Academy, consists of three members, all of whom will continue to perform for the petitioner in the United States. Counsel asserts that two additional individuals have been performing with the beneficiary as members of this group since "at least April 21, 2009." Counsel states that the other two group members were not included on the Form I-129 or supporting documents because USCIS granted them permanent resident status. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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)(ii)(A) provides, in pertinent part, 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 the terms "group" and "internationally recognized" as follows:

Group means two or more persons established as one entity or unit to perform or to provide a service.

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)(A) provides, in pertinent part, that P-1 classification shall be accorded to an entertainment group to perform as a unit based on the international reputation of the group. Individual entertainers shall not be accorded P-1 classification to perform separate and apart from a group. *Id.*

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.

II. Discussion

The sole issue addressed by the director is whether the beneficiary is coming to the United States to perform as a member of a group, rather than as an individual performer.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 19, 2010. The petitioner identified the group name as "[REDACTED]" and included only one individual beneficiary. The majority of the evidence in the record refers to the China-based [REDACTED], which was established in 1995. The evidence submitted is sufficient to establish this group's international recognition; however, none of the submitted evidence regarding the group mentions the beneficiary by name or confirms his membership in the group.

With respect to the petitioner's need for the services of one or more members of the [REDACTED] in the United States, the petitioner submitted: (1) a favorable consultation letter from the American Guild of Variety Artists (AGVA), dated April 18, 2007; (2) the petitioner's contractor agreement with [REDACTED], dated March 23, 2010; (3) the petitioner's performance itinerary for the period September 2009 through September 2010; (4) 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 (5) copies of USCIS approval notices for three prior P-1 petitions filed by the petitioner on behalf of the instant beneficiary.

The above-referenced contractor agreement indicates that [REDACTED] send its Martial Artists [to] participate and perform on [the petitioner's] series productions," and that it "agrees to have its members participate in the martial arts programs at [the petitioner's] center." Article 5 of the contractor agreement contains the following provision:

1. [REDACTED] member is [the beneficiary]. It shall warrants [sic] that it would maintain such number of performers. In case any of the performer shall become unavailable, [REDACTED] shall be responsible for replace such performer with someone with the same or above qualifications and experiences.

The contractor agreement is signed by the petitioner's president and by the beneficiary in his capacity of "Deputy Director" of [REDACTED]

The petitioner's statement regarding the group's composition was provided in a letter dated April 25, 2010, as follows:

This is to state each member of [REDACTED] and the exact dates for which [REDACTED] has employed each member on a regular basis. Please see details below.

[The beneficiary]: employed since July 28, 1997

The director denied the petition on April 26, 2010, concluding that the petitioner had failed to establish that the sole beneficiary would be performing as a member of a group as defined at 8 C.F.R. § 214.2(p)(3). In denying the petition, the director further stated:

Records indicate that the beneficiary has previously been granted P-1 status as a member of an entertainment group. However, the petitioner is filing the petition for an individual alien. Furthermore, the petitioner has included a statement of fact in the petition as to the membership of the group. It says, "This is to state each member of [REDACTED] [entertainment group] and the exact dates for which [REDACTED] has employed each member on a regular basis." The petitioner has listed only the beneficiary.

The director observed that "as it appears that the other members of the group may no longer be in the United States, the beneficiary would be performing separate and apart from the group."

On appeal, counsel for the petitioner objects to the director's conclusion that "it appears that the other members of the group may no longer be in the United States." Counsel asserts that the evidence submitted on appeal "clearly establishes that the alien beneficiary will be performing as a member of a 'group' as he will be but one of three members of [REDACTED] performing in the United States for the petitioner." Counsel explains as follows:

In its application, the petitioner submitted a statement indicating the only member of [REDACTED] that needs a P-1 visa, the beneficiary. . . . The Director erroneously

concluded that the statement intended to indicate all of the members of [REDACTED] Academy. Attached herewith, you will find a list of all of the current members of [REDACTED] including those not needing P-1 visas. . . . The two additional members of the group are [REDACTED]. Both of these latter members have been performing with the beneficiary, as members of [REDACTED] since at least April 21, 2009, as indicated on their previous I-797 Notices. . . . The petitioner did not indicate [REDACTED] on the Form I-129 it submitted nor on any attachments submitted therewith due to the fact that both of these members were granted permanent resident status by the USCIS. . . . Accordingly, the petitioner did not need to submit any petition or application in order to retain their services as performers.

The petitioner submits a revised statement dated May 25, 2010, in which it states that the members of [REDACTED] include the beneficiary, [REDACTED]. The petitioner asserts that all three individuals continue to perform for the petitioner as a group, and explains that two members are now permanent residents and thus were not named in the prior statement. The petitioner submits evidence that [REDACTED] adjusted status to that of U.S. permanent residents in April 2010, as well as evidence that the beneficiary, [REDACTED] were all included on the same approved P-1 petition filed by the petitioner in March 2009.

Upon review, the AAO will withdraw the director's decision dated April 26, 2010, and remand the matter for further review and entry of a new decision.

As a preliminary matter, we emphasize that, because the director did not request additional evidence prior to issuing her decision, the petitioner had the opportunity to submit additional evidence to the AAO on appeal. *Cf. Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The AAO has considered this evidence and finds it insufficient to establish the beneficiary's eligibility as a member of an internationally-recognized entertainment group.

If it is established through sufficient evidence that the petitioner continues to employ all three claimed members of the group [REDACTED] and that the beneficiary will be in the United States solely to perform as an entertainer as a member of this group, then the petition may be approved. However, the only evidence submitted regarding the composition of this group is in the form of inconsistent statements from the petitioner, and a contractor agreement that identifies the instant beneficiary as the group's sole member as of the date of filing.

With respect to the petitioner's two statements regarding the membership of the group, counsel suggests that the petitioner did not need to include the other members, or at least believed that it did not need to include the other members of the group, because those members were not included in the P-1 petition. The regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(2) specifically require the petitioner to provide a statement listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group. Even if the P-1 beneficiary is coming to join a U.S. group comprised primarily of United States citizens, the petitioner is required to submit a statement to establish the composition of the group. A group with only one P-1 member is not exempt from meeting the evidentiary requirements at 8 C.F.R. § 214.2(p)(4)(iii)(B)(1) and (2).

While it is possible that the failure to include the remaining group members in its initial statement was a simple misunderstanding of the regulatory requirements on the part of the petitioner, the AAO notes that the contractor agreement submitted at the time of filing undermines the petitioner's claim that it continues to employ all three group members to perform together as a unit. The contractor agreement explicitly identifies the beneficiary as the only member of Liang Shan Kung Fu under contract with the petitioner. Furthermore, no additional evidence has been submitted to establish that the remaining claimed group members are under a similar contract. Under the circumstances, the AAO finds the petitioner's statement alone insufficient to establish that the petitioner continues to employ the other group members and intends to employ all three individuals to perform as " [REDACTED] Fu Academy" during the requested period of employment. Therefore, the matter will be remanded to the director, who is instructed to request additional evidence to establish the petitioner's ongoing employment of Mr. [REDACTED] and Mr. [REDACTED] the other claimed group members.

In addition, the AAO finds two additional deficiencies that were not addressed in the director's decision. First, while the petitioner has submitted extensive evidence regarding the reputation of the [REDACTED], none of this evidence specifically mentions the beneficiary, the claimed group members, or their performances in the United States. Similarly, none of the petitioner's promotional materials or other documentation specifically mention or advertise performances by [REDACTED]. The beneficiary's contract with the petitioner indicates that he will perform "on [the petitioner's] series productions." While the AAO does not doubt the beneficiary's association with the [REDACTED] or that he would be providing services as a kung fu performer in the United States, it has not been established that he would do so as a member of an entertainment group that performs as a unit based on the international reputation of the group. *See* 8 C.F.R. § 214.2(p)(4)(iii)(A). As the petition will be remanded, the director is instructed to request additional evidence specific to the beneficiary and his group's performances in the United States, such as programs, photographs, promotional materials or any other available evidence establishing that the members of the group do in fact perform as [REDACTED] for the petitioner in the United States, and not simply as additional performers in the petitioner's own productions.

Second, the AAO notes that, pursuant to the terms of the beneficiary's contract with the petitioner, he is required to serve as a martial arts instructor. Even if it were established that the claimed three-person entertainment group remains intact, services performed as a martial arts instructor would more likely than not be performed by the beneficiary individually. Teaching a martial arts class is not an activity or event that require the internationally-recognized entertainment group to perform as a unit. The director should request additional evidence to clarify the exact nature of the beneficiary's intended activities in the United States. If the petitioner has sought to hire the beneficiary for the purposes of augmenting its own demonstration team and coaching staff, rather than to perform solely as a member of an internationally-recognized entertainment group, then it would appear that the petitioner has not requested the appropriate visa classification.

For the foregoing reasons, the AAO will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted pursuant to the discussion above, and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if

adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.