

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

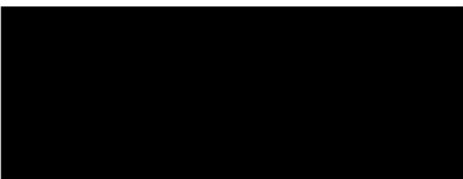
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D9

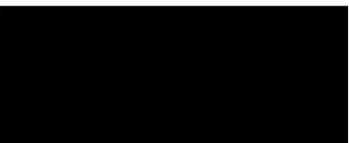


FILE: WAC 09 054 50139 Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2010

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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:

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.

Thank you,

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 withdraw the director's decision and approve the petition.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to employ 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). The petitioner is self-described as an amusement and entertainment company. It seeks to temporarily employ the beneficiaries, a circus act known as "Family Maltese Troupe," for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that beneficiary group has been internationally recognized for a sustained and substantial period of time, or, in the alternative, that the beneficiaries are entering the United States to join a circus that has been recognized nationally as outstanding 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. On appeal, counsel asserts 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" consistent with section 214(c)(4)(B)(iv) of the Act. Counsel submits a brief and extensive additional evidence in support of the appeal.

Upon review of the totality of the evidence in the record, the petitioner has established that the beneficiaries will be performers in a nationally-recognized circus. Accordingly, the AAO will withdraw the director's decision and approve the petition.

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.

Section 214(c)(4)(B)(iv) of the Act, 8 U.S.C. § 1184(c)(4)(B)(iv) provides:

The subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performances of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time, or as part of such a circus.

The criteria and documentary requirements for members of internationally recognized entertainment groups are set forth at 8 C.F.R. § 214.2(p)(4)(iii)(A) and (B). The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(C) sets forth special provisions for certain entertainment groups, including the following:

- (I) *Alien circus personnel.* The 1-year group membership requirement and the international recognition requirement are not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group, provided that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

In denying the petition, the director determined that the evidence of record was insufficient to establish that the beneficiary's entertainment group, the "[REDACTED]" is internationally recognized as that term is defined at 8 C.F.R. § 214.2(p)(3). The AAO concurs with this conclusion and the director's finding is uncontested on appeal.

The director further determined that the petitioner failed to establish that the petitioner's circus is nationally recognized. The director found that the submitted evidence, which included numerous newspaper articles, a detailed letter from the petitioner, and an advisory opinion letter, established only that the petitioner's circus "has a long history and is very well known in Hawaii." In denying the petition, the director observed that "a nationally recognized circus can easily provide newspaper articles and advertisements from around the country, as well as multiple testimonials from around the country."

On appeal, the petitioner submits additional documentary evidence, including testimonials from national associations in the petitioner's industry, business associates, circus operators, circus performers and other circus-related organizations, who state that the petitioner has been nationally recognized in the circus industry for a substantial period of time. This evidence includes a letter from [REDACTED] President & CEO of the [REDACTED] who states:

I have known the family/management of [the petitioner] for over thirty years by way of national, amusement industry trade publications and their membership in our national trade organization. I know that they are very active with national organizations; [REDACTED] is on the board of directors of the International [REDACTED] and they have been members of the national [REDACTED] of America. They have showcased national performers at major fairs and events in the U.S. and . . . their performers have entertained millions of patrons in various states on the West Coast.

To suggest that they do not have national recognition is to not understand how [the petitioner] has contributed to the amusement industry in terms of entertainment and performances. They provide international performers with an opportunity to gain national recognition and play a vital role with many contributions to the Circus industry on a national level.

. . . I don't believe that a show of this magnitude is required to travel in multiple states to achieve the national recognition they have worked hard to gain over the past 100 years.

It is my professional opinion that . . . [the petitioner] is a circus/entertainment business with national recognition throughout the state of Hawaii, as well as the entire amusement industry in the United States.

The petitioner also submits a letter from [REDACTED], President and CEO of the [REDACTED] [REDACTED] who states:

Among our directors from the United States is [REDACTED], who is the owner of [the petitioning company], a company that has been a member of [REDACTED] since 1963. Ms. [REDACTED] was elected to the Board based in part on her company's excellent reputation in the United States and abroad as an outstanding organization – one that has been in existence for over 100 years and contributes to the advancement of the entire amusement industry.

Please accept this letter as our independent advisory opinion that [the petitioning company] is recognized nationally and internationally within the amusement/entertainment industry as a company that has a long history of providing top quality circus shows and family entertainment.

The petitioner's national reputation is also recognized by the [REDACTED] of America, and the [REDACTED] Inc. The letters further indicate that the petitioning organization has hosted circus acts which have performed internationally with the [REDACTED]

[REDACTED] Counsel emphasizes that "the Petitioner's venues are always lined with top international entertainment stars, for example at the 50th State Fair, the likes of, Pop princess 'Rihanna, Nick Cannon . . ., Soulja Boy, Disney Channel star Selena Gomez all appeared before record crowds showcasing their talents and participating in the circus and carnival festivities as sponsored by [the petitioner]."

Counsel also emphasizes that the submitted newspaper articles document the petitioner's many accomplishments as the first circus and carnival business in Hawaii, earning the petitioner's founder the title of "[REDACTED] Pacific." Counsel asserts that, notwithstanding its geographical location, the petitioner's 100 year history in the business is recognized nationally.

Upon review, counsel's assertions are persuasive. The AAO finds the evidence, particularly the supplemental evidence submitted on appeal, sufficient to establish that the petitioner's circus show is recognized nationally as outstanding. The petitioner is regarded as a "carnival empire" in Hawaii's major press and clearly recognized in the industry outside Hawaii. Accordingly, the AAO will withdraw the director's decision and approve the petition.

WAC 09 054 50139

Page 5

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. Here, the petitioner has met that burden.

ORDER: The director's decision dated April 9, 2009 is withdrawn. The petition is approved.