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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]

Dq

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 16 2010

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. 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 dismiss the appeal.

The petitioner states that it is a theatrical agency, producer and artist manager. It seeks 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 circus performer. The beneficiary was previously granted P-1 status and the petitioner now seeks to extend her status for one additional year.

The director denied the petition, citing two independent and alternative grounds for the decision. The director determined that the petitioner: (1) failed to provide a description of the nature of the beneficiary's proposed events and a complete itinerary of performances; and (2) failed to establish that the beneficiary is a member of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiary will be performing in a circus that has been recognized nationally as outstanding for a sustained and substantial period of time.

On appeal, the petitioner submits a brief, asserting that it has filed and received approvals for a multitude of P-1 visa extensions and never, until recently, had an extension denied. Upon review and for the reasons discussed herein, the petitioner has not overcome the grounds for denial of the petition.

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.

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:

(*1*) *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.

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.

Finally, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

> *(2)* A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(A) provides that a petition which requires an alien to work in more than one location (e.g. a tour) must include an itinerary with the dates and locations of the performances.

II. Discussion

The first issue in this matter is whether the petitioner complied with the requirement to describe the nature of the intended events and to provide a complete itinerary of services and engagements. *See* 8 C.F.R. § 214.2(p)(2)(ii)(C); 8 C.F.R. § 214.2(p)(2)(iv)(A); 8 C.F.R. § 214.2(p)(2)(iv)(E).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 14, 2009. The petitioner stated that the beneficiary will serve as an "entertainer" and "performer." Where asked to indicate the address where the beneficiary will work, the petitioner stated "Various – per circus itineraries." The petitioner indicated that the beneficiary will receive a weekly wage of $1,750. On the O and P Classification Supplement to Form I-129, where asked to indicate the nature of the event, the petitioner indicated "Circuses and other entertainment venues." The petitioner described the beneficiary's duties as "Entertainer – Performer."

In a letter dated December 11, 2009, the petitioner stated that the beneficiary "is a world prominent performer of outstanding achievement and extraordinary ability," and noted that she has three prior P-1 petition approvals. The petitioner submitted a copy of its artist management contract with the beneficiary, which has a term of two years commencing on December 16, 2008. Pursuant to the terms of the contract the petitioner has the authority to negotiate and secure employment and contracts for the beneficiary's services in the fields of "motion pictures, legitimate stage, radio broadcasting, television and all other fields of entertainment."

The petitioner also submitted a "standard performer's engagement contract" between the beneficiary and [redacted] to perform at [redacted] and others as required" in "Los Angeles, California and others as required (t/b/a)" from December 16, 2009 through December 15, 2010, at a rate of $250 per working day.

The petitioner provided two documents dated 2009 and titled [redacted] 35th Anniversary." One document lists 19 "Non-Shrine Productions" including events in California, Hawaii, Nevada, St. Louis,

New York and Japan. No specific dates or addresses are provided for any events. The second document lists 25 " by name and city. A third document lists 40 dates and cities, but does not include any other descriptive information. Specifically, the document lists dates from January 7 through November 20, but does not include a year. The AAO notes that the cities listed on this document do not coincide with the cities listed on the above-referenced Circus America event listings.

The director issued a request for additional evidence ("RFE") on January 5, 2010. The director requested that the petitioner submit the following: (1) an explanation of the nature of the events or activities, the beginning and ending dates for the activities, and a copy of any itinerary for the events or activities; and (2) an itinerary with the dates and locations of all performances, if the beneficiary will be providing services in more than one location. The director also requested a written consultation from a labor organization.

In response to the director's request, the petitioner submitted a favorable consultation letter from the American Guild of Variety Artists. The petitioner indicated that the remaining requested evidence was provided with the initial petition filing.

The director denied the petition on March 5, 2010, noting that the petitioner failed to submit the requested itinerary with specific dates and details for the beneficiary's proposed events or activities.

On appeal, the petitioner asserts that it submitted with the initial petition two contracts and an itinerary which set forth all terms and conditions of employment as required by the regulations. The petitioner notes that although will offer the beneficiary engagements, the petitioner also seeks to arrange "professional services in the fields of legitimate stage, motion pictures, radio broadcasting, television and all other fields of entertainment." The petitioner states that the performers it represents "also frequently appear at various other entertainment venues" including state fairs, amusement parks, night clubs and casinos. The petitioner emphasizes that the instant petition is a request for an extension of the beneficiary's existing P-1 status to continue previously-approved employment without change.

Upon review, the petitioner has not overcome the grounds for denial. The petitioner filed the instant petition as an agent. A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. See 8 C.F.R. § 214.2(p)(2)(iv)(E)(2). As noted above, the regulations further provide that if the beneficiary will work in more than one location, the petitioner must include an itinerary with the dates and locations of the performances. 8 C.F.R. § 214.2(p)(2)(iv)(A).

Here, the petitioner has submitted, without explanation, two different vague "itineraries" which, in addition to providing completely different information regarding the locations of proposed activities, fall significantly short of meeting the regulatory requirements with respect to the level of detail included in the itinerary. The two 35th Anniversary Season itineraries are dated 2009 and as such, it is not clear whether the events listed would be held in 2010, which is the requested period of employment, as no dates are associated

with the listed events. While the other submitted itinerary lists 40 specific dates and locations, there is no correlation between this list and the itineraries, no year listed on the itinerary, and no descriptive information indicating which events are scheduled for the listed dates.[1] As such, the AAO cannot conclude that these dates represent upcoming events to be held by the nationally-recognized circus through which the beneficiary seeks classification as a P-1 circus performer.

While the petitioner claims that will not be the beneficiary's only employer, it has opted not to provide information regarding the identity of the beneficiary's other employers for the requested period of employment. This information is critical, as a P-1 circus performer is only eligible for employment with a nationally-recognized circus. The petitioner's indication that he also arranges for his represented artists to "frequently perform" at nightclubs, casinos and other non-circus events or venues raises additional questions as to whether all of the beneficiary's performances would be on behalf of a nationally-recognized circus.

Finally, the director specifically advised the petitioner, after reviewing the initial evidence, that a complete itinerary and an explanation of the nature of the proposed events and activities would be required to adjudicate the petition. The petitioner failed to submit a response to this specific inquiry and instead relied on the initial evidence, which was already deemed to be insufficient, and prior P-1 petition approvals.

The AAO acknowledges the petitioner's claim that it has filed a "multitude" of P-1 visa extensions and regularly submits the same evidence that was provided in support of the instant petition. The AAO finds, however, that it was appropriate for the director to request an itinerary and an explanation of the nature of events or activities in this matter. The regulation at 8 C.F.R. § 214.2(p)(13) provides that supporting documents are not required in support of the extension *unless requested by the director*. The director's request for additional evidence was well within her authority. Based on the petitioner's statements and evidence submitted in support of the current petition, the AAO finds ample reason to question whether an adequate itinerary was submitted in support of any prior petition filed on the beneficiary's behalf. Furthermore, it is worth emphasizing that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the foregoing, the petitioner has not overcome the stated grounds for denial and the appeal will be dismissed.

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[1] The AAO notes that an identical list of 40 dates and locations was submitted by the petitioner in support of two other P-1 petitions that were initially filed in December 2008 for the 2009 circus season As such, it is reasonable to conclude that this itinerary, which begins in the month of January and ends in November, is not for the year 2010.

The remaining issue addressed in the director's decision was whether the petitioner established that the beneficiary is a member of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiary will be performing in a circus that has been recognized nationally as outstanding for a sustained and substantial period of time.

The evidence of record is sufficient to establish that the beneficiary has a contract with a circus, and that this circus that has been nationally recognized for a sustained period of time. As the beneficiary is a circus performer, the one-year group membership requirement and the international recognition requirement applicable to other P-1 entertainers are inapplicable as it applies to her employment with . *See* 8 C.F.R. § 214.2(p)(4)(iii)(C).

Pursuant to the terms of the petitioner's artist management contract with the beneficiary, however, it appears that the beneficiary may also secure employment, through the petitioner as agent, "in the fields of motion pictures, legitimate stage, radio broadcasting, television and all other fields of entertainment." The petitioner indicates that the performers it manages "frequently appear at various other entertainment venues, including State Fairs, Amusement Parks, Night Clubs, Casinos, etc." As discussed above, the petitioner has not provided a complete itinerary definitively outlining the beneficiary's proposed activities with for the period of time requested. Frequent appearances at non-circus venues and outside of her contract with or other nationally-recognized circuses would not fall within the scope of an approved P-1 petition for a circus performer. Given the paucity of evidence in the record and the deficiencies of the submitted itineraries, it cannot be determined that the beneficiary would *solely* provide services as a circus performer with a nationally-recognized circus. For this additional reason, the appeal will be dismissed.

III. Conclusion

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. The prior approvals do not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

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, that burden has not been met.

ORDER: The appeal is dismissed.