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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**

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

IN RE: Petitioner: [REDACTED]
Beneficiaries: [REDACTED]

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 beneficiaries 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 circus performers. The beneficiaries were previously granted P-1 status and the petitioner seeks to extend their 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 beneficiaries' proposed events and a complete itinerary of performances; and (2) failed to establish that the beneficiaries are members of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiaries 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, a favorable consultation from the American Guild of Variety Artists, and additional evidence. 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 or 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 3, 2008. The petitioner stated that the beneficiaries will serve as "entertainers" and "performers." Where asked to indicate the address where the beneficiaries will work, the petitioner did not respond. The petitioner indicated that the beneficiaries will receive a weekly wage of \$2,450.

In a letter dated December 2, 2008, the petitioner stated that the beneficiaries "are world prominent performers of outstanding achievement and extraordinary ability." The petitioner submitted a copy of its artist management contract with one of the beneficiaries, which has a term of two years commencing on January 1, 2009. 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 "Lukety Duo" and "Circus America, Inc." to perform at "Circus America and others as required" in "Los Angeles, California and others as required (t/b/a)" from January 1, 2009 through December 31, 2009, at a rate of \$350 per working day. The contract is also signed by only one of the two beneficiaries.

The petitioner provided two documents titled "Circus America Celebrates 30th Anniversary," one of which provides a list of "Circus America Non-Shrine Productions" dated 2004. A total of 19 circus events are listed for the United States, Canada, Hong Kong and Japan. No specific dates or addresses are provided for any events. The other document lists 25 Shrine circus events in the United States, also with no dates or addresses.

The director issued a request for additional evidence ("RFE") on February 2, 2009. 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 copy of any itinerary for the events or activities; and 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, among other items, a written consultation from a labor organization

In response to the director's request, the petitioner submitted a letter dated February 6, 2009, in which it stated: "All evidence now requested which is customarily required for the approval of P-1 visa extensions was already submitted with our Petition Except the union consultation, which is not required!" The petitioner stated that other P-1 petitions have been approved by USCIS based on the same evidence that was submitted with the initial petition. The petitioner submitted copies of approval notices for other P-1 petitions that it has filed.

The director denied the petition on March 5, 2009, noting that the petitioner failed to submit any of the requested additional documentation or itinerary with specific dates for the beneficiary's proposed events or activities.¹

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 Circus America will offer the beneficiaries engagements, the petitioner also arranges for its performers to 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 beneficiaries' existing P-1 status to continue previously-approved employment without change. The petitioner further states that when it submitted its response to the RFE, it received an electronic response from USCIS indicating that USCIS would advise if any additional information was needed. The petitioner notes that no additional request was made before the notice of denial was issued.

The petitioner submits in support of the appeal what it claims is a copy of previously-submitted evidence. This evidence includes a list of 40 dates and cities which was not in fact submitted at the time of filing. The list appears to have taken the place of the above-referenced documents dated 2004, which list 19 "non-shrine productions" to be held by Circus America in the United States, Canada, Japan and Hong Kong, and 25 Shrine circus productions to be held in the United States. On the new list, the dates are listed as "January 20th thru 23rd - Columbia, South Carolina," "January 26th thru 30th - Nashville, Tennessee" and so on, through November 20. No descriptive information is provided, no year is provided, and no venues or addresses are listed.

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

¹ The record shows that the director re-issued the decision on June 30, 2009.

documentation includes a complete itinerary of services or engagements. The itinerary must 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 beneficiaries 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. Furthermore, the only itinerary submitted prior to the adjudication of the petition was dated 2004 and clearly did not provide the beneficiaries' event schedule for 2009. While the petitioner claims that Circus America will not be the beneficiaries' only employer, it has opted not to provide information regarding the identity of the beneficiaries' 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 perform at nightclubs, casinos and other non-circus events raises questions as to whether all of the beneficiaries' 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 prior P-1 petition approvals, claiming that the same information submitted with this petition was previously deemed to be sufficient to warrant approval of a P-1 extension.

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 made in 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 beneficiaries' 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). If a director requests additional evidence that a petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the records of separate nonimmigrant proceedings are not combined. If the petitioner would like the director to consider previously submitted materials, the petitioner should submit copies of those documents. USCIS does not consolidate previously filed petitions and does not have access to them at the time of adjudication. *See Hakimuddin v. DHS*, Slip Opinion, 2009 WL 497141 (S.D. Tex. Feb. 26, 2009).

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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the new itinerary to be considered, it should have submitted the document in response to the director's request for evidence. *Id.* In addition, as discussed above, the itinerary submitted on appeal, in addition to its lack of specificity, bears no resemblance to the 2004 "itinerary" submitted at the time of filing. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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

The remaining issue addressed in the director's decision was whether the petitioner established that the beneficiaries are members of an internationally recognized entertainment group that has performed together for more than one year, or that the beneficiaries 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 one of the beneficiaries, [REDACTED] has a contract with a circus, Circus America, 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 his employment with Circus America. *See* 8 C.F.R. § 214.2(p)(4)(iii)(C). The other beneficiary, [REDACTED] appears to have a circus aerial act based on the photographs provided. However, her name does not appear on the contract with either the petitioner or with Circus America. It has also not been established that she is a member of [REDACTED] juggling act. Therefore, the petitioner has not corroborated its claim that [REDACTED] has will be performing with a nationally-recognized circus.

Furthermore, pursuant to the terms of the petitioner's artist management contract with [REDACTED], it appears that he 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 beneficiaries' proposed activities for the period of time requested. Frequent appearances at non-circus venues and outside of the contract with Circus America 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 regarding the beneficiaries' schedule for the period of time requested, it cannot be determined that the beneficiaries would solely be circus performers with a nationally-recognized circus. For this additional reason, the appeal will be dismissed.

Another issue not addressed by the director is whether the beneficiaries have foreign residences which they have no intention of abandoning and whether they seek to enter the United States temporarily, pursuant to section 101(a)(15)(P)(i) of the Act. [REDACTED] is a native and citizen of Argentina who last entered the United States on July 23, 2001, more than seven years prior to the filing of the instant petition. [REDACTED] is a native and citizen of Mexico who last entered the United States on January 30, 2002, nearly seven years prior to the filing of the petition. There is no evidence in the record or in the Service database that they have left the United States since they initially entered P-1 status, or that they maintain foreign residences in their native countries. They appear to be seeking at least their seventh extension of P-1 classification and at least their fifth extension with the petitioner. The evidence in the record as presently constituted is insufficient to establish that the beneficiaries are aliens having a foreign residence which they have no intention of abandoning who seek to enter the U.S. temporarily.

The beneficiaries' continuous residence in the United States also raises questions as to whether they have completed the event for which they initially entered the United States. USCIS may extend the period of authorized status of a P nonimmigrant in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. Section 214(a)(2)(B) of the Act, 8 U.S.C. 1184(a)(2)(B). In the instant case, the petitioner has repeatedly sought and received extensions on the duration of status of the beneficiaries, presumably to complete an event.

The term event is defined at 8 C.F.R. 214.2(p)(3) as "an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement." The examples provided by the regulation suggest occurrences or phenomena of definite and finite duration. Here, the petitioner has repeatedly sought extensions thereby indefinitely extending the beneficiaries' stay. Congress did not intend to allow entertainers to circumvent the labor certification process and remain in the U.S. indefinitely. When the petitioner initially filed a Form I-129 visa petition on the beneficiaries' behalf, it submitted an itinerary. The petitioner may not automatically extend the classification by merely submitting an annual request for an extension with a copy of an old itinerary, as it attempted to do in this matter. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiaries, 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.