

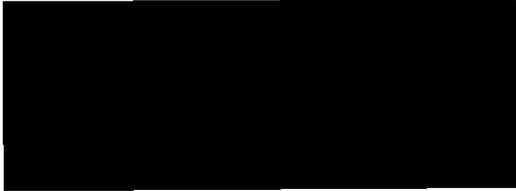
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

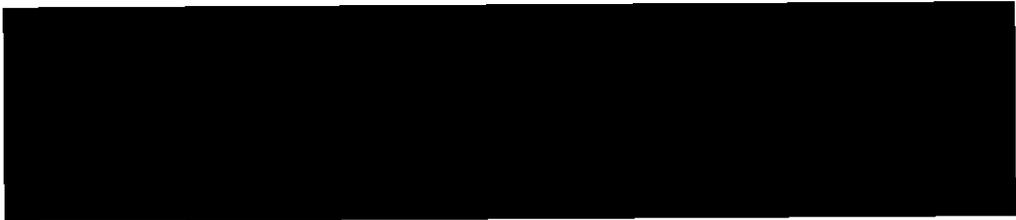
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 28 2010**

IN RE: Petitioner:
Beneficiaries:



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, with a fee of \$585. 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of 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 an internationally recognized entertainment group. The petitioner is an artist management company acting as agent for the beneficiaries, a musical group known as [REDACTED]. Four of the beneficiaries were previously granted P-1 status as members of "El Pueblo" and seek a one-year extension of stay to continue touring in the United States. The petitioner indicates that the remaining five beneficiaries joined the group within one to three months prior to the filing of the petition on June 2, 2009.

The director denied the petition concluding that more than 25 percent of the performers in the group had been with the group for less than one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner states, "although five new members of El Pueblo have not been with the group for a period of one year, they are talented musicians who are now essential to the group's success in their native Honduras and abroad."

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)(iii) of the Act provides the following:

- (I) The one-year relationship requirement of clause (i)(III) shall not apply to 25 percent of the performers and entertainers in a group.

- (II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform separate and apart from the group. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except for the limited circumstances provided for in 8 C.F.R. § 214.2(p)(4)(iii)(C)(2) relating to certain nationally known entertainment groups, it must be established that the group has been internationally recognized as outstanding for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of a one-year relationship with the group and must provide functions integral to the group's performance. *Id.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The sole issue to be addressed in this proceeding is whether the petitioner established that the beneficiaries meet the one-year relationship requirement set forth at section 214(c)(4)(B)(i)(II) of the Act.

The director determined, and the petitioner concedes, that five members of the nine-member group had been part of the group for less than one year. The petitioner indicates that four of the five vocalists have been with the group since January 2007, while the fifth vocalist joined the group on March 2, 2009. The remaining group members, a dancer and three musicians, joined the group on May 1, 2009, just one month before the petition was filed.

On appeal, the petitioner asserts that all five new group members are "talented musicians who are now essential to the group's success." The petitioner further explains the reasons for the group's addition of five new members as follows:

██████████ is a musical group who has been established and recognized for their unique style of Reggaeton. Since the beginning of this unique style, Reggaeton has had a tremendous popularity not only among the young people but music lover of all ages, however within the past year the Reggaeton seems to be fading away and loosing [sic] its [sic] popularity. Due to this unexpected factor, ██████████ has now integrated another well-liked rhythm called Bachata to their repertoire as an effort to continue the great success they have obtained since their initiation.

In order to keep their recognition as one of the most popular musical groups and sustained their popularity with not only Reggaeton but now also Bachata, ██████████ has acquired extraordinary new talent who could maintain the group on top of the charts with their Reggaeton and Bachata rhythms.

Upon review, the petitioner has failed to submit sufficient evidence relating to the basis for a waiver of the one-year relationship requirement. As stated above, in order for a musical group to qualify for P-1 classification, at least 75% of the group must have been performing together for at least one year as of the date the petition was filed. In this case, less than one half of group has been performing together for at least one year. The petitioner has not submitted documentary evidence to establish that one or more group members had to be replaced because

of an illness or unanticipated and exigent circumstances, or that any of the aliens who have been with the group for less than one year have replaced an essential member of the group.

Furthermore, the petitioner has not established that the five new members, individually or as a whole, augment the group or perform a critical role. The petitioner claims for the first time on appeal that [REDACTED] recently acquired the new group members in order to integrate Bachata-style rhythms with the group's existing Reggaeton sound. Prior to the denial of the petition, the petitioner described the group solely as a highly successful Reggaeton group and provided no explanation for the addition of five new members. Furthermore, the petitioner has not submitted any supporting documentation regarding the critical role the new group members would perform in the group, such as contracts, press releases, reviews, advertisements or any other published materials reflecting the new composition of the group. Nor has the petitioner submitted any information regarding the newly-added artists themselves that would support the petitioner's assertions that they are recognized Bachata artists. Recent advertisements for the group depict five young men, and the liner notes for the group's 2009 album, despite showing the same five men on the album cover, identifies only four group members: [REDACTED]

Thus, the petitioner has failed to satisfy the waiver provision set forth at section 214(c)(4)(B)(iii)(II) and 8 C.F.R. § 214.2(p)(4)(iii)(C)(3). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the appeal will be dismissed.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.