

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: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 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: 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.

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 to the service center for further action and entry of a new decision.

The petitioner filed the nonimmigrant visa petition seeking classification of the beneficiary under section 101(a)(15)(P)(i)(b) 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 a management, public relations and promotions business and the beneficiary is a musician and lead singer performing as [REDACTED]. The petitioner seeks to extend the beneficiary's P-1 status for one year so that he may continue to tour in the United States.

The director denied the petition on March 14, 2009, based on a finding that the petitioner failed to submit any of the required initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system.

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 asserts that it was unaware of any additional evidence or documentation required in support of the petition. The petitioner notes that its most recent petition requesting an extension of the beneficiary's P-1 status was filed electronically and approved without any additional documentation. The petitioner submits a letter of explanation, an itinerary and a copy of the beneficiary's Form I-94 card in support of the appeal.

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 evidentiary criteria for members of internationally-recognized entertainment groups are set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B). In addition, all P nonimmigrant petitions must be accompanied by the evidence set forth at 8 C.F.R. § 214.2(p)(2)(ii).

The issue in this matter is whether the director appropriately denied the petition based on the petitioner's failure to submit initial evidence for the visa classification in support of its electronically filed petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on November 25, 2008. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

The regulation at 8 C.F.R. § 103.2(b)(1) states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

Relying on these regulatory provisions, the director denied the petition based on the petitioner's failure to submit supporting evidence. The director noted that, without the initial evidence, she was "precluded from processing the petition for further action(s) and/or if applicable, the basis from which to request additional evidence."

However, this matter involved a continuation of previously approved employment without change, involving the same petitioner and beneficiary. The applicable regulations at 8 C.F.R. § 214.2(p)(13) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original P-1 petition, provided that the beneficiary will continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director.

Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was improper. Under the circumstances present in this case, the petitioner was not required to submit supporting

documents unless instructed to do so by the director. Accordingly, the director's decision dated March 14, 2009 will be withdrawn.

As the director denied the petition in error, the petition will be remanded to the director for further action and entry of a new decision. The AAO notes that the prior approvals alone are insufficient to establish that the instant petition is approvable.

Where asked to indicate the beneficiary's nontechnical job description on the Form I-129, the petitioner indicated that the beneficiary is a "[REDACTED]" and the petitioner describes the beneficiary as "an internationally-recognized rock musician." The petitioner has not identified the other members of the group. 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 petitioner indicates that the beneficiary was the original lead singer of the [REDACTED]. The AAO does not doubt the petitioner's ability to demonstrate the beneficiary's international recognition as an entertainer, but notes that additional evidence may be needed to establish that [REDACTED] is an internationally-recognized entertainment group pursuant to the regulatory requirements.

The director is instructed to review the evidence submitted in support of the appeal and to request any additional evidence necessary to determine the beneficiary's eligibility for classification as a member of an internationally-recognized entertainment group.

ORDER: The director's decision dated March 14, 2009 is withdrawn. The matter is remanded to the director for further action and entry of a new decision which, if adverse to the petitioner, shall be certified to the AAO.