

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



89

Date: OCT 23 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 AAO will summarily dismiss the appeal.

The petitioner, an entertainment and concert promotion company, filed the 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 known as [REDACTED]. The petitioner seeks to hire the beneficiaries for a period of one year.

The director determined that the petitioner failed to submit evidence that the group is internationally recognized pursuant to the regulatory definition of the term and the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). The director determined that the petitioner failed to provide evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field, and the petitioner failed to provide evidence meeting at least three of the six criteria set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3).¹ Regarding the evidentiary criterion set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i), the director noted that, while the petitioner had submitted flyers and advertisements regarding the group's performances in productions or events, the petitioner had not submitted evidence that the productions or events have a distinguished reputation. Regarding the evidentiary criterion set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(vi), the director noted the petitioner had not submitted evidence of the group's previous earnings and the evidence submitted to establish the group's prospective earnings contains discrepancies.² In addition, the director noted the petitioner did not submit evidence to establish that the group will command a high salary comparable to others in the field.

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.

Where asked to briefly state the reason for appeal on the Form I-290B, Notice of Appeal or Motion, the petitioner did not state a reason for the appeal, but referred to a statement submitted on appeal. In the petitioner's statement on appeal, the petitioner states "we can attest to the fact that [REDACTED] is regarded as one of the finest Artists, specializing in 'Banda Music,' which has an overwhelming following in the United States." In petitioner's statement, the petitioner states that it will pay the

¹ The director found that the petitioner submitted evidence sufficient to meet the regulatory criterion set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(v). The director found that the petitioner did not claim to meet or submit evidence relating to the regulatory categories of evidence at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(ii), (iii) or (iv). The petitioner does not challenge that conclusion on appeal. Accordingly, the petitioner has abandoned those claims. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005)(holding, in counseled case, that when appellant fails to offer argument on an issue, that issue is abandoned); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011). Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of those criteria.

² The director noted the following evidence regarding the group's prospective earnings: the I-129 petition states that the wages for a full time position are \$20,000; the contract of employment between the petitioner and the group states that the petitioner will pay the group "and each of you a minimum compensation of \$60,000 per annum," (which the director notes would equate to \$780,000); and, the contract states that the group will be paid \$8,000 to \$10,000 per performance with 46 performance dates listed on the itinerary (which the director notes would equate to \$368,000 to \$460,000.)

group \$8,000 to \$10,000 per live performance and guarantees the group “a minimum compensation of \$60,000.00 for the one year contract, as a whole NOT per individual.” On appeal, the petitioner’s statement does not address the director’s finding that the petitioner has not submitted evidence, such as a statistical comparison of salaries in the beneficiary’s field of endeavor, to establish that the group has commanded or will command a high salary. On appeal, the petitioner has submitted additional flyers which advertised performances of the group in the United States and Mexico.³ However, neither the petitioner’s statement on appeal nor the additional evidence addresses the director’s finding that the petitioner has not submitted evidence that the productions or events have a distinguished reputation.

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). In addition, all P nonimmigrant petitions must be accompanied by the evidence set forth at 8 C.F.R. § 214.2(p)(2)(ii).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification. Upon review, the AAO concurs with the director’s decision and affirms the denial of the petition. The petitioner’s brief statement on appeal does not identify any erroneous conclusion of law or statement of fact on the part of the director, but rather appears to consist of a suggestion that the petition be

³ On appeal, the petitioner also submitted flyers which have previously been submitted into the record.

approved. Nor has the petitioner submitted evidence on appeal that overcomes the director's grounds for denial of the petition.

Based on the foregoing, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiary group is internationally recognized pursuant to the regulatory definition of the term and the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3), and the petitioner has not provided evidence on appeal that overcomes this deficiency.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.