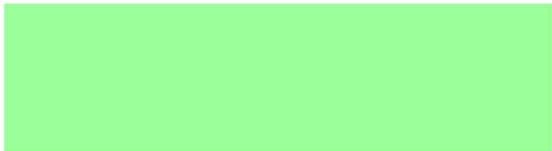


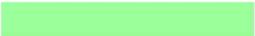
(b)(6)

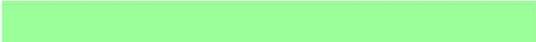
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



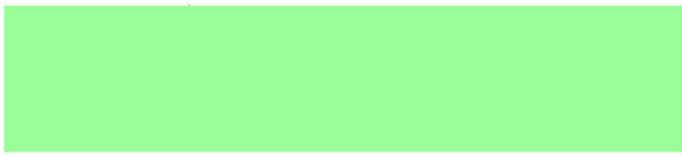
U.S. Citizenship  
and Immigration  
Services



DATE: **JUN 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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:  


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.

Thank you,

\*Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter to the service center director for entry of a new decision. On remand, the director issued a notice of intent to deny the petition on February 24, 2009, and provided the petitioner with 30 days in which to submit additional information, evidence or arguments in support of the petition. The director issued a notice of abandonment on April 20, 2009, and certified the decision to the AAO. The AAO will affirm the director's decision to summarily deny the petition as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

The petitioner in this matter is an artists' management and public relations company. The beneficiaries are a violinist and a violist, and seek to enter the United States to join two other musicians in a string quartet. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiaries under section 101(a)(15)(P)(i)(b) of the Immigration and Nationality Act (the Act), as members of an internationally recognized entertainment group. The petitioner seeks to employ the beneficiaries for a period of approximately one year and eight months.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries would be entering the United States to join a foreign-based entertainment group, as contemplated by the statute and regulations. Specifically, the director concluded that since two members of the group were United States citizens, and the group the beneficiaries intend to join is a United States-based group, the P-1 classification is unavailable to the beneficiaries.

The AAO withdrew the director's decision, finding the regulation in question makes no specific restriction with regard to whether the internationally recognized group which the alien is coming to join be based in the United States or abroad. Instead, the AAO remanded the case for a determination of whether the group which the beneficiaries will join is internationally recognized, and identified additional deficiencies not addressed by the director that create a presumption of ineligibility in this matter.

On remand, the director issued a notice of intent to deny the petition on February 24, 2009, identifying specific deficiencies in the evidence and providing the petitioner with 30 days in which to submit additional information, evidence or arguments in support of the petition.

The petitioner failed to respond to the director's notice of intent to deny the petition within 30 days, and therefore, the director denied the petition for abandonment, pursuant to 8 C.F.R. § 103.2(b)(13), in a decision dated April 20, 2009. The director also issued a notice of certification advising the petitioner that the matter has been certified to the AAO pursuant to 8 C.F.R. § 103.4(a)(2), and granting 30 days in which to submit a brief or written statement. As of this date, the AAO has not received a brief or statement from counsel or the petitioner, and the record will be considered complete.

The regulation at 8 C.F.R. § 103.2(b)(13)(i) states:

. . . . If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be

summarily denied as abandoned, denied based on the record, or denied for both reasons.

Upon review, the AAO concurs with the directors' decision and affirms the denial of the petition based on its abandonment by the petitioner.

The AAO notes that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5. *See* 8 C.F.R. § 103.2(b)(15). Denial due to abandonment does not preclude the filing of a new application or petition with a new fee; however the priority or processing date of an abandoned petition may not be applied to a later application. *Id.*

Additionally, a review of U.S. Citizenship and Immigration Services (USCIS) records indicates that one of the beneficiaries of this petition, [REDACTED] was also the beneficiary of an approved employment-based immigrant petition (Form I-140) and that she has adjusted status to that of a United States permanent resident as of May 10, 2008. While the petitioner has not withdrawn the appeal in this proceeding as to this beneficiary, it would appear that this beneficiary is presently a lawful permanent resident, and regarding her the issues in this proceeding are moot.

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.

Accordingly, the AAO shall not disturb the director's denial of the petition.

**ORDER:** The director's decision dated April 20, 2009 is affirmed. The petition is denied.