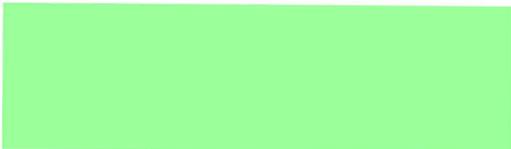


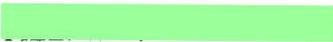


U.S. Citizenship
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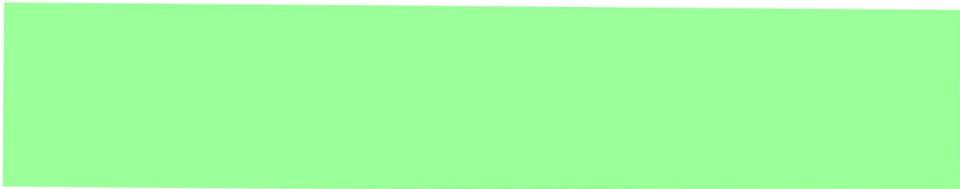
(b)(6)



DATE: **MAR 31 2014**

Office: CALIFORNIA SERVICE CENTER 

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:

PRO SE

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center Director 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 the nonimmigrant petition seeking to classify the beneficiaries as members of an internationally recognized entertainment group under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner has identified the group name as [REDACTED]. The petitioner seeks to employ the beneficiaries temporarily in the United States as P-1 members of an entertainment group to perform at various venues and to record music for the petitioner for three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiaries are members of an internationally recognized entertainment group as defined at 8 C.F.R. § 214.2(p)(3). More specifically, the director determined that the evidence provided failed to satisfy any of the six criteria for internationally recognized entertainment groups pursuant to 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). In addition, the director determined that the petitioner failed to adequately explain the nature of the events or activities, and the beginning and ending dates for the events or activities, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(C).

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 submitted sufficient evidence to establish that the beneficiaries qualify for the P-1 classification. The petitioner submits a brief and additional documentation in support of the appeal.

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.

The regulation at 8 C.F.R. § 214.2(p)(1) provides for classification of artists, athletes, and entertainers:

- (i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country 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 a sponsor.

Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as . . . [a] member of an internationally recognized entertainment 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 regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides P-1 classification to an alien who is coming temporarily to the United States:

- (2) To perform with, or as an integral part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires the following evidence to accompany a petition for a P nonimmigrant:

- (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.

The regulation at 8 C.F.R. § 214.2(p)(3) defines "internationally recognized" as follows:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B) requires that a petition for members of internationally recognized entertainment groups must be accompanied by:

- (1) Evidence that the group has been established and performing regularly for a period of at least 1 year;
- (2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and
- (3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial amount of time. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or [prizes] for outstanding achievements in its field or by three of the following types of documentation:
 - (i) Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
 - (ii) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;
 - (iii) Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
 - (iv) Evidence that the group has a record of major commercial or critical successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications;
 - (v) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
 - (vi) Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated in the field as evidenced by contracts or other reliable evidence.

II. Discussion

1. The Evidentiary Criteria

The first issue to be addressed is whether the petitioner established that the beneficiaries are members of an entertainment group which has been internationally recognized for a sustained and substantial amount of time.

Upon review, and for the reasons stated herein, the AAO concurs with the director that the petitioner failed to establish that the entertainment group is internationally recognized. The petitioner failed to establish eligibility under any of the evidentiary requirements set forth in the regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3).

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3) states that evidence that the group has been internationally recognized for a sustained and substantial amount of time may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field, or by three of the six types of documentation set forth in 8 C.F.R. §§ 214.2(p)(4)(iii)(B)(3)(i)-(vi).

The petitioner has not submitted evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. While the petitioner submitted evidence that the group has been given recognition certificates for its participation in various local events such as the 3rd

these recognition awards are neither significant international awards or prizes, nor do they recognize the group for outstanding achievements in the field. The petitioner submitted evidence that one of the beneficiaries was awarded a recognition certificate by the [REDACTED] for "spreading our music and genre that has transcended over coastal borders in prestige of our region." However, this award, given by a regional government office for "spreading" the region's music and genre, falls considerably short of a significant international award or prize for outstanding achievements in its field, as required by the regulation.

Therefore, the petitioner must establish that the group is internationally recognized by submitting evidence satisfying three out of the six criteria outlined at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i)-(vi). Each criterion will be discussed below.

Evidence that the group has performed, and will perform, as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

Under the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i), the petitioner submitted several advertisements/flyers establishing that the group has performed at various events and productions as a starring or leading entertainment group. On appeal, the petitioner also claims that the group has performed in a "huge festival hosted by the beer company [REDACTED] in 2010. However, the petitioner has failed to establish that any of these productions or events has a distinguished reputation, as required by the plain language of the regulations. The fact that the group participated in a festival sponsored by a beer company does not constitute evidence that the festival itself is an event with a distinguished reputation.

With respect to the group's future performances, the petitioner submitted contracts and an itinerary indicating that the group will perform at several venues in the United States, including [REDACTED]

However, the petitioner failed to establish that the group will perform as a starring or leading group in these productions. The itinerary and contracts are silent as to whether the group will be the sole performer or will be performing along with other groups. In addition, the petitioner failed to establish that the productions or events in which the group will perform in the United States have a distinguished reputation, as required by the plain language of the regulations.

Accordingly, the petitioner's evidence fails to meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i).

Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material

In order to meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(ii), the petitioner must submit evidence from major newspapers, trade journals, magazines, or other major media, establishing that the group has achieved international recognition and acclaim. To qualify as major media, the publication should have significant national or international distribution.

The petitioner has submitted several published reviews which describe the group in positive terms such as "widely recognized," "sensational," "great," and "successful." However, the petitioner submitted no evidence establishing that these reviews were published by *major* newspapers, trade journals, magazines, or other major media, as required by the plain language of the regulation. The petitioner failed to submit any evidence establishing the nature, distribution, and circulation of the publications. In many instances, the petitioner failed to even identify the name of the publications in which the reviews appeared, thus precluding the AAO from assessing the nature of the publications.

Based on the above, the petitioner's evidence fails to meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(ii).

Evidence that the group has performed, and will perform, services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

The record indicates that the group has performed as a leading or starring group for various organizations and establishments, including the petitioner. However, the petitioner submitted no explanation or evidence establishing the distinguished reputation of these organizations and establishments. With respect to the group's future performances in the United States, the petitioner has neither established that the group will perform as a lead or starring group, nor that its performances are for organizations and establishments that have a distinguished reputation.

On appeal, the petitioner asserts that the group has and will perform "in venues of great prestige." However, the petitioner failed to submit any evidence in the form of articles in newspapers, trade journals, publications, or testimonials to support its assertion regarding the prestigious reputation of the venues. The petitioner's unsupported assertions are insufficient to meet the burden of proof. 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)).

The petitioner failed to submit evidence meeting the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iii).

Evidence that the group has a record of major commercial or critical acclaimed successes, as evidenced by such indicators as ratings; standing in the field; box office receipts; record, cassette, or video sales; and other achievements in the field as reported in trade journals, major newspapers, or other publications

Under the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iv), the petitioner submitted copies of the group's album covers, as well as a letter attesting that the group "is a talented group of musicians well known throughout all of Latin America and due to the great success that our latest album has had we are currently faced with a high demand for their performance." However, the petitioner provided no corroborating evidence, in the form of published indicators such as ratings or album sales, to establish that the group has "a record of major commercial or critically acclaimed successes" as required by the plain language of the regulation. The petitioner's uncorroborated letter attesting to an album's success, alone, is insufficient to establish eligibility under this criterion.

On appeal, the petitioner asserts that the group "is known for numerous hit songs," and that its latest hit [REDACTED]. However, the petitioner failed to further explain and provide documentary evidence of its claims. Moreover, even if the petitioner were able to establish that the group's latest song [REDACTED], the petitioner failed to explain the significance of this record and establish that it constitutes a major commercial or critical acclaimed success.

As such, the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iv).

Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in the form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements

The petitioner has submitted several recognition certificates the group has received from various organizations and government bodies. However, the petitioner failed to establish that these certificates constitute evidence that the group has achieved "significant recognition for achievements" from "recognized experts in the field," as required by the plain language of the regulation.

For example, the petitioner submitted its recognition certificate from the [REDACTED] [REDACTED] which states: "Because thanks to your participation, in its [REDACTED] is a solid institution working for the transmission and reception of Mexican radio."¹ The petitioner submitted a recognition certificate from the [REDACTED], recognizing the group for "their valuable participation in the child's day festival[.] Thankful for their support because thanks to you everything was a success." The petitioner also submitted a recognition certificate from the [REDACTED], thanking the

¹ The original certificate states the organization's name as "[REDACTED]";

group for its participation in an event. These certificates merely thank the group for its participation in various events; they do not indicate in any way that the group has received significant recognition for achievements. Moreover, the petitioner submitted no evidence establishing that these organizations can be considered “recognized experts in the field.”

The petitioner submitted evidence that one of the beneficiaries was awarded a recognition certificate by the [REDACTED] for “spreading our music and genre that has transcended over coastal borders in prestige of our region.” However, the petitioner failed to explain and establish the significance of this certificate, thus failing to establish that this recognition constitutes “significant recognition for achievements” as required by the plain language of the regulation. At most, this certificate suggests that the group has received a lesser degree of recognition from a local government office. The term “internationally recognized” means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country. Here, there is no evidence that the group is renowned, leading, or well-known beyond a particular region in Mexico. Furthermore, the petitioner submitted no evidence establishing that this particular government office is a “recognized [expert] in the field” of music.

Based on the above, the petitioner’s evidence fails to meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(v).

Evidence that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other similarly situated [groups] in the field as evidenced by contracts or other reliable evidence.

Based on the Personal Appearance Contracts the petitioner submitted, the group receives a remuneration of [REDACTED] per performance. The petitioner stated on Form I-129 that the beneficiaries’ wages in the United States will be [REDACTED] per performance.² The petitioner has not submitted any evidence to establish that the group’s past and prospective remuneration or wages is high compared to other groups similarly situated in the field. The petitioner has not met the sixth and final criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(vi).

In summary, the evidence submitted by the petitioner fails to meet any of the six criteria listed in the regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). The petitioner has failed to establish that the group has achieved sustained international recognition in the field. For this reason, the appeal will be dismissed.

2. The Events or Activities in the United States

The second issue to be discussed is whether the petitioner adequately explained the nature of the events or activities, and the beginning and ending dates for the events or activities, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(C).

In the denial, the director determined that the discrepancies regarding the dates on the contracts and the itinerary prevented USCIS from establishing the circumstances of the proposed employment, including the beginning and ending dates of the proposed events. On appeal, the petitioner submitted a letter explaining, in pertinent part:

² The petitioner also stated on Form I-129 that the proffered position is not a full-time position.

First of all and most important, we would like to apologize if the previous contract dates and schedule was not in the proper order. Please keep in mind we are unable to officially close dates with our agents before obtaining the groups VISA's. First we try to reach an agreement of possible dates we can all work together. Then we process the paperwork to obtain the work visas for the group. While we wait for the approval our agents work on creating the event flyers where our group will be the main attraction, but do not announce it until we receive the approval. Upon receiving your approval we immediately notify everyone to confirm all dates and we all begin the process of announcing dates and locations of where the group will be performing. This is the reason why we do state towards the bottom of our performance schedule "DATES ARE SUBJECT TO CHANGE."

Upon review of the record, the AAO finds that the petitioner has adequately explained the nature of the events or activities, and the beginning and ending dates for the events or activities, pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(C). The petitioner has submitted itineraries and contracts for the group's proposed performances in the United States, showing the nature, locations, and dates of the performances. While the AAO acknowledges the director's concern regarding the discrepancies in the event dates, on appeal the petitioner has submitted a reasonable explanation of the discrepancies. The AAO will withdraw the director's finding with respect to the events or activities pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(C).

III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been fully met. With respect to the group's events or activities in the United States pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(C), the petitioner has sustained its burden. With respect to establishing that the beneficiaries are members of an internationally recognized entertainment group as defined at 8 C.F.R. § 214.2(p)(3), however, the petitioner has not met its burden. Accordingly, the appeal must be dismissed.

ORDER: The appeal is dismissed.