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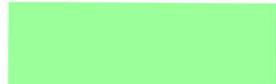


U.S. Citizenship
and Immigration
Services



Date: **MAY 27 2014** Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE:

Petitioner:

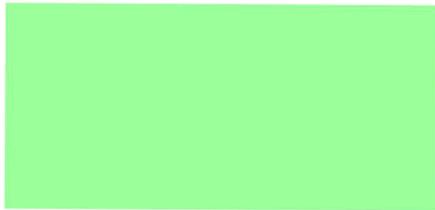


Beneficiary:

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 (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 immigrant 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 beneficiary as a member of an internationally recognized entertainment group 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)(b). The petitioner seeks to employ the beneficiary as a member of an entertainment group for a period of one year.

The director denied the petition on two grounds. First, the director found that the petitioner failed to submit an appropriate labor consultation. Second, the director found that the petitioner failed to establish that at least seventy-five percent (75%) of the group has been together for at least 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.

For a petition for P-1 nonimmigrant status under section 101(a)(15)(P)(i) of the Act, the statute and regulations require the petitioner to submit a written consultation from a labor organization. Section 214(c)(4)(D) of the Act; Section 214(c)(6)(A)(iii) of the Act; 8 C.F.R. § 214.2(p)(2)(ii)(D). In addition, the regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B) requires the petitioner to submit evidence that the group has been established and performing regularly for a period of at least 1 year, and 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. *See also* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B).

On June 14, 2013, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested, *inter alia*, a written consultation from an appropriate labor organization. The director specifically advised the petitioner that the consultation must be from a U.S. labor organization. In addition, the director requested a statement listing each group member. The director specifically advised the petitioner that “[t]he statement must include the exact dates each member was employed with the group on a regular basis.”

In response, the petitioner failed to provide the requested evidence. Instead, the petitioner submitted a consultation letter from [REDACTED], and a list of the names of its group members without any dates. The director properly denied the petition for failing to meet the documentary requirements.

On appeal, the petitioner asserts that the letter from [REDACTED] complies with the requirement to provide a “written consultation.” The petitioner claims that the USCIS Adjudicator’s Field Manual (AFM) allows for a letter from a “peer group” under which the letter from [REDACTED] qualifies, and does not make a written consultation from a labor union mandatory. Alternatively, the petitioner submits a labor consultation from the [REDACTED] for the first time on appeal. The petitioner also submits for the first time on appeal a list of its group members with dates for which each member has been employed. The petitioner claims that the RFE only requested a list of band members, with which it complied.

Upon review, the AAO agrees with the director’s decision and will affirm the denial of the petition.

The petitioner failed to comply with the written labor consultation process. The statute and regulations specifically require a written consultation from a labor organization for the P-1 classification. Section 214(c)(4)(D) of the Act; Section 214(c)(6)(A)(iii) of the Act; 8 C.F.R. § 214.2(p)(2)(ii)(D). The letter from [REDACTED] does not constitute a written consultation from a labor organization, as [REDACTED] is not a labor organization. The petitioner may not submit alternate forms of evidence in lieu of the written labor consultation. Moreover, the petitioner's assertion that the USCIS Adjudicator's Field Manual (AFM) allows for a letter from a "peer group" and does not require a written consultation from a labor union is not persuasive or accurate. The copy of the AFM submitted by the petitioner specifically states that consultation letters vary depending upon the type of petition, and with respect to the P-1 visa, a consultation letter from a labor organization is required. Notably, the petitioner was specifically advised in the RFE that the written consultation must come from a U.S. labor organization.

While the petitioner submits a letter from the [REDACTED] for the first time on appeal, this document will not be considered. Similarly, the list of the petitioner's group members with dates of employment, submitted for the first time on appeal, will not be considered. Evidence which has been previously requested and is submitted for the first time on appeal will not be considered in these proceedings. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Contrary to the petitioner's claims, the director's RFE did not merely request a list of group members; the director specifically advised the petitioner to submit a statement listing each group member that "must include the exact dates each member was employed with the group on a regular basis."

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The record before the director failed to contain the requisite written labor consultation and evidence establishing that at least seventy-five percent (75%) of the group has been together for at least one year. Consequently, the appeal will be dismissed.

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 met.

ORDER: The appeal is dismissed.