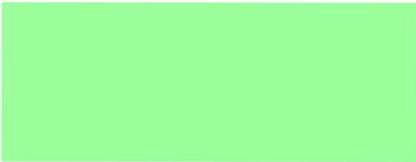


(b)(6)

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

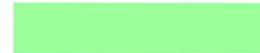


U.S. Citizenship
and Immigration
Services



Date: FEB 25 2015 Office: VERMONT 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: SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the 12 beneficiaries under section 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, a talent management company, currently represents the beneficiaries pursuant to an approved P-1 petition. It seeks to extend the beneficiaries' employment for a period of one year.¹

The acting director denied the petition, concluding that the petitioner did not establish that the beneficiaries have been recognized internationally as outstanding in their field for a sustained and substantial period of time. The petitioner subsequently filed an appeal, which the acting director subsequently forwarded to us.

The petitioner asserts that the beneficiaries as a group are internationally recognized by virtue of their music being played in more than one country, as supported by evidence of the group's "multiple recordings and concert appearances." The petitioner submits additional documentary evidence in support of the appeal.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiaries' group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time.

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

¹ In the Form I-129 at part 2 the petitioner noted that the basis for classification is "New employment."

- (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)(3) defines "international recognition" 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

The petitioner filed the Form I-129 on September 9, 2013. The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a Request for Further Evidence (RFE) dated September 18, 2013, the petitioner's response to the RFE, the acting director's decision dated October 3, 2013, the petitioner's appeal, and additional evidence submitted in support of the appeal.

The evidence of record establishes that the beneficiaries are musicians and singers in a group which plays tropical/Latin music, specifically a style of Colombian dance music called "cumbia." The evidence indicates that the group [REDACTED] was formed in [REDACTED] and that the group's members have changed over the years. On Attachments to the Form I-129, the petitioner provided the exact dates for which each member has been employed on a regular basis by the group. In a letter dated September 5, 2013, the petitioner described the group as having had "a long musical career and multi-talented and versatile group of musicians" and asserted that the group "is known throughout all of Latin America for their flavorful and tropical sound, multiple recordings and concert appearances."

The sole issue to be addressed in this proceeding is whether the petitioner established that the beneficiaries, as a group, are an internationally recognized entertainment group.

Initially, the petitioner submitted the following evidence pertaining to the evidentiary requirements at 8 C.F.R. § 214.2(p)(4)(iii)(B):

- An advisory opinion letter from the American Federation of Musicians (AFM).
- A document listing the individual members of the group and their role in the group.
- An itinerary for the group's 2013-2014 tour.
- Copies of the beneficiaries' Entertainment Contract Agreements pertaining to their prospective United States employment at six different venues.
- Press releases and Mexican newspaper articles from 2003, 2005, 2006, 2007, 2008, 2009 and 2013, pertaining to the group's performances in several countries, including Belize, Canada, Mexico and the United States. The petitioner also provided several undated newspaper articles. The petitioner provided uncertified translations for all but one of the articles. See 8 C.F.R. § 103.2(b)(3). In addition, the petitioner submitted numerous foreign language articles without accompanying translations. The regulation at 8 C.F.R. § 103.2(b)(3) requires the

submission of complete certified English language translations for all foreign language documents. Because the petitioner did not submit certified translations of the documents, they have no probative value.

- An article from *Wikipedia* on ‘ [REDACTED] There are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).²
- Advertising flyers from the group’s past performances.
- Promotional photographs of the group.
- Copies of the group’s CDs.
- A letter dated February 4, 2010, from [REDACTED] the legal manager of [REDACTED] regarding the trademark registration referred to as [REDACTED]. The petitioner did not submit a certified translation of the letter. See 8 C.F.R. § 103.2(b)(3).

On September 18, 2013, the acting director issued a request for additional evidence (RFE), instructing the petitioner to submit additional evidence to establish, *inter alia*, that the group has been internationally recognized in the field for a sustained and substantial period of time, pursuant to the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3).

In a letter dated September 20, 2013, the petitioner stated that it was “answering and submitting proof of what you need in order to proceed with the review of the petition for [the beneficiaries].” The evidence submitted in response to the RFE included the following:

² See also a copy of the online content from http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on February 3, 2015, and incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

- A copy of a contract for exclusive artistic representation between the petitioner and the beneficiaries as the group called [REDACTED] dated March 10, 2009.
- Advertising flyers for the group's performances in 2012 and 2013.
- A discography of the group.

The acting director denied the petition on October 3, 2013, concluding that the petitioner did not establish that the beneficiaries have been internationally recognized in their field for a sustained and substantial period of time. The petitioner did not provide evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. The acting director determined that the petitioner also did not provide evidence meeting at least three of the criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i) through (vi).

We maintain plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On appeal, the petitioner does not specifically claim eligibility under the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). The petitioner provides a letter stating that it is "answering all the requested materials for your consideration," and submits documentary evidence, including numerous additional foreign language articles regarding the group's past performances. There is no indication that the translator properly certified any of the provided translations in the manner required by the regulation. As previously stated, the regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of complete certified English language translations for all foreign language documents. Because the petitioner did not submit certified translations of the documents, this evidence has little probative weight.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiaries' group has been internationally recognized as outstanding in their discipline for a sustained and substantial period of time.

The Evidentiary Criteria

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3) states that a petitioner may demonstrate that a group has been internationally recognized for a sustained and substantial amount of time through 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 neither asserted nor submitted evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. 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.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i), the petitioner must submit 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.

The petitioner submitted numerous articles and advertising flyers to establish that the group has performed at various events and productions as a starring or leading entertainment group in Mexico, Chile, Central America, the United States and Canada. As previously stated, because the petitioner did not submit certified translations for all but one of the articles, these articles have little probative value. See 8 C.F.R. § 103.2(b)(3). The petitioner provided a certified translation for an article dated [REDACTED] and published in the Mexican newspaper [REDACTED]. However, the original foreign language article is not in the record. Regardless, the article provides that the group will perform in Canada without discussing the reputation of the event. Given the lack of certified translations for the remaining articles and the lack of information about the publications that carried these articles, the petitioner has not established that any of the productions or events featured in these articles had a distinguished reputation in the field of tropical/Latin American music, as required by the plain language of the regulations. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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 the [REDACTED]

[REDACTED] The submitted contracts establish that the group will perform as a starring or leading group in these productions. However, the petitioner has not submitted critical reviews, advertisements, publicity releases, publications or other evidence to establish that the productions or events in which the group will perform in the United States have a distinguished reputation, as required pursuant to the plain language of the regulation.

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)(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 published material, 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 not submitted evidence that satisfies this criterion.

The petitioner has submitted numerous published articles. As previously stated, because the petitioner did not submit certified translations for all but one of the articles, they have no probative value. *See* 8 C.F.R. § 103.2(b)(3). The petitioner provided a certified translation for an article dated [REDACTED] and published in the Mexican newspaper [REDACTED]. However, the original foreign language article is not in the record. Regardless, the article provides that the group anticipates a positive reception performing in Canada at several venues without addressing their recognition or acclaim. This article does not meet the petitioner's burden to establish the group's international recognition and acclaim through published reviews.

In addition, the petitioner submitted no evidence establishing that any of these articles were published by *major* newspapers, trade journals, magazines, or other published material, as required by the plain language of the regulation. The petitioner did not submit any evidence establishing the nature, distribution, and circulation of the publications. In several instances, the petitioner did not identify the name of the publications in which the reviews appeared.

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.

As previously indicated, the petitioner submitted contracts and an itinerary indicating that the group will perform at several venues in the United States, including the [REDACTED]. The submitted contracts establish that the group will perform as a starring or leading group in these productions. However, the petitioner has not submitted articles in newspapers, trade journals, publications or testimonials to establish the distinguished reputation of these organizations and establishments where the beneficiaries will perform. Therefore, the petitioner did not 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 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

The petitioner has submitted copies of several of the group's CDs and a discography for the group. In addition, the evidence indicates that the group performed some of their music in the 2007 Mexican movie, [REDACTED]. The petitioner has not submitted evidence to establish 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. The record does not establish that the group has garnered any major commercial or critical successes at the regional, national or international level. Therefore, the petitioner has not met 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

In order to meet the fifth criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(v), the petitioner must provide evidence 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.

The petitioner has not provided evidence of the group's specific achievements in the field from recognized experts, critics, or other organizations. The petitioner provided a "no objection" letter from the American Federation of Musicians (AFM). The letter from the AFM, however, does not constitute evidence the group has achieved significant recognition for achievements in the field. Rather, the "no objection" letter from the AFM satisfies the petitioner's burden to submit a written consultation from a labor organization pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D). Consultations are advisory and are not binding on USCIS. See 8 C.F.R. § 214.2(p)(7)(i)(D). The AFM's unsupported statement that the beneficiaries' group "is recognized internationally and is renowned in the Cumbia Music field," is insufficient to establish that the group the group has achieved significant recognition for achievements in the field. It is unclear how the AFM reached this conclusion based on the evidence submitted with the petition.

Based on the above, the petitioner's evidence does not satisfy 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.

The sixth and final criterion requires the petitioner to submit evidence to establish that the group has either commanded a high salary or will command a high salary or other substantial remuneration for services compared to other groups similarly situated in the field as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(vi). The petitioner has not submitted any evidence to establish that the group's past remuneration or wages is high compared to other groups similarly situated in the field. The petitioner stated on Form I-129 that the beneficiaries' wages in the United States will be \$3,000 per performance.³ According to the submitted Entertainment Contract Agreements, the group receives a remuneration of \$4,000 to \$5,000 per performance. The petitioner has not submitted any evidence to establish that the group's past or prospective remuneration or wages is high compared to other groups similarly situated in the field. Based on the above, 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 does not 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 not established that the group has achieved sustained international recognition in the field. For this reason, we will dismiss the appeal.

III. Prior Approval

The record indicates that USCIS previously approved a petition for P-1 status filed on behalf of the group. The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the acting director reviewed the record of proceeding and concluded that the petitioner did not meet all eligibility requirements for the requested classification. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute material and gross error on the part of the acting director.

³ The petitioner also stated on Form I-129 that the proffered position is not a full-time position.

Based on the lack of required evidence of eligibility in the current record, we find that the acting director was justified in departing from the previous petition approval by denying the instant petition.

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). We need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner does not meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. Conclusion

In summary, the evidence submitted by the petitioner fails to meet at least three of the six criteria listed in the regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). Therefore, the petitioner did not establish that the group has achieved sustained international recognition in the field.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.