



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-I-G-, INC.

DATE: SEPT. 3, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a talent management company, seeks to classify the Beneficiaries as members of an internationally recognized entertainment group. *See* the Immigration and Nationality Act (the Act) § 101(a)(15)(P)(i), 8 U.S.C. § 1101(a)(15)(P)(i). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner identified the internationally recognized entertainment group in its initial cover letter as the “ [REDACTED] ” The Petitioner seeks to hire the Beneficiaries for a period of six months. The Director denied the petition, concluding that the Petitioner did not demonstrate the beneficiary’s eligibility for the requested classification. More specifically, the Director determined that the Petitioner did not establish that the Beneficiaries will be performing in the United States as members of a group that has been recognized internationally as outstanding in their field for a sustained and substantial period of time. The Director observed that all of the submitted evidence pertains solely to one beneficiary, Mr. [REDACTED], that much of the evidence refers to him as a solo or individual artist, and that no evidence confirms that the two Beneficiaries are members of a group.

On appeal, the Petitioner asserts that it has established that the Beneficiaries are an internationally recognized entertainment group. The Petitioner submits additional documentary evidence in support of the appeal. On May 5, 2015, we issued a notice of derogatory information and intent to dismiss (NOID) pertaining to the Petitioner’s corporate status. The Petitioner responded. Upon review, and for the reasons stated herein, while the Petitioner has overcome the concerns in our NOID, we concur with the Director’s determination that the Petitioner has not established the Beneficiaries’ eligibility for the requested classification.

I. PERTINENT LAW AND REGULATIONS

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)(ii)(A) provides, in pertinent part, 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)(A) provides, in pertinent part, that P-1 classification shall be accorded to an entertainment group to perform as a unit based on the international reputation of the group. Individual entertainers shall not be accorded P-1 classification to perform separate and apart from a group. *Id.*

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(1) and (2) requires that a petition for members of internationally recognized entertainment groups must be accompanied by evidence that the group has been established and performing regularly for at least a year and a statement listing each member of the group and the exact dates that member has been employed on a regular basis by the group. Subparagraph (3) requires evidence that the group has been internationally recognized in the discipline for a sustained and substantial period of time, which may be demonstrated by the group’s nomination or receipt of significant international awards or prizes for outstanding achievements or evidence that satisfies at least three of six criteria at subparagraphs (i)-(vi).

(b)(6)

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 16, 2014. The record of proceeding includes the Form I-129 and supporting documentation, a request for further evidence (RFE) dated May 30, 2014, the Petitioner's response to the RFE, the Director's decision dated July 18, 2014, the Petitioner's appeal, and additional evidence the Petitioner submitted in support of the appeal. In the initial letter dated April 24, 2014, the Petitioner asserts that the [REDACTED] consists of two members. The Petitioner's letter identifies one member of the group, Mr. [REDACTED] also known as "[REDACTED]" and describes him as the group's leader and "a prominent musician" who has "risen to fame in Nigeria by singing and performing a unique kind of street gospel." The Petitioner emphasizes that Mr. [REDACTED] has released four albums between 2005 and 2012, and that he has "been presented with several musical awards locally." The Petitioner's letter does not identify Mr. [REDACTED] by name as a member of the [REDACTED].

The Petitioner seeks to have the group come to the United States to participate in the Petitioner's "[REDACTED]" which it asserts "originated on December 24, 2010[,] pursuant to a 'Performing Agreement' entered into between [the Petitioner] and [the Beneficiary and his group]." The Petitioner explains that the tour will include stops in eight major metropolitan areas for an estimated 31 performances, and "will include other bands as performing act[s]." The Petitioner states that it will pay the Beneficiaries \$1,000 per performance and will collect all income from the sale of tickets and merchandise.

III. ANALYSIS

A. Qualifying United States Employer

Pursuant to 8 C.F.R. § 214.2(p)(2)(i), a P-1 petition for an athlete or entertainment group shall be filed by a U.S. employer, a U.S. sponsoring organization, a U.S. agent, or a foreign employer through a U.S. agent. Although not addressed by the Director, at the time of filing the Form I-129 in 2014, according to the records of the Maryland Department of Assessments and Taxation, Business Services, the Petitioner's status was not in good standing in Maryland. Specifically, the Petitioner forfeited its status in the state on October 3, 2011, for failure to file a property return for 2010. Therefore, on May 5, 2015, we notified the Petitioner in a NOID that its standing and entitlement to carry on business is material to whether it qualifies as a United States employer. *See* section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1). The Petitioner responded to our NOID on May 21, 2015, asserting that it is now in good standing in Maryland. The Petitioner submitted a copy of the Maryland Notice of Good Standing as of May 13, 2015, and evidence of its filing articles of revival in the state of Maryland on that date.

Under Maryland law a corporation may revive a forfeited charter. Md. Code Ann., Corps. & Ass'ns § 3-507. Upon revival, "all contracts or other acts done in the name of a corporation while the charter was void are validated, and the corporation is liable for them." *Id.* § 3-512. Specifically, a revival of a corporate charter relates back to the date of forfeiture. *Arnold Developer, Inc. v. Collins*, 567 A.2d 949, 952 (Md. 1990). *See also Rahman v. Napolitano*, 814 F. Supp. 2d 1098

(b)(6)

(W.D. Wash. 2011)(reversing the revocation of immigrant visa petitions filed by beneficiaries' Maryland-based employer that had retroactively revived its forfeited corporate charter under Maryland law during the course of the administrative proceedings.) Upon review, the evidence establishes that the Petitioner retroactively revived its corporate status in Maryland. Therefore, the Petitioner qualifies as a U.S. employer pursuant to 8 C.F.R. § 214.2(p)(2)(i).

B. Internationally Recognized Group

1. Multiple Beneficiaries

At issue is whether the Petitioner established that the two Beneficiaries are coming to the United States to perform with, or as an integral part of the performance of, an entertainment group. 8 C.F.R. § 214.2(p)(1)(ii)(A). As stated above, 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,¹ 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. 8 C.F.R. § 214.2(p)(4)(iii)(A).

The Petitioner indicated on the Form I-129 that the Beneficiaries' "group name" is "[REDACTED]" On the O and P Classification Supplement to Form I-129, where asked to describe the nature of the event, the Petitioner explained: "This is a musical performance summer tour event to start in [REDACTED] with follow-up events in other cities." Where asked to describe the duties to be performed, the Petitioner stated: "[REDACTED]" The Petitioner attached a listing of the two members of the [REDACTED] and their roles within the group. Mr. [REDACTED] is listed as "band leader" and Mr. [REDACTED] as a "Backup Artiste/Dancer" with the band since January 1, 2012.

In addition to a list of the group's two members, the Petitioner initially submitted the following: a "no objection" letter from the [REDACTED]; an itinerary of the group's [REDACTED] tour; two recommendation letters; a newspaper article; promotional flyers pertaining to past performances of Mr. [REDACTED] in Nigeria; and copies of Mr. [REDACTED] four compact discs (CDs). All of the initial evidence regarding the group's international recognition pertained solely to Mr. [REDACTED].² In addition, the evidence with the petition included a signed Performing Agreement between "[Mr.] [REDACTED] . . . and [the Petitioner]." The agreement is

¹ For example, nationally recognized groups who might find it difficult to demonstrate international recognition due to limited access to media or consequences of geography need not document international recognition.

² According to the materials, Mr. [REDACTED] performs and records under the following names: [REDACTED], and [REDACTED]

(b)(6)

dated December 24, 2010, and was signed by Mr. [REDACTED] his manager and a representative of the Petitioner in December 2010, prior to the date when Mr. [REDACTED] is stated as having begun performing as a member of the [REDACTED]. The agreement makes no reference to Mr. [REDACTED]

The Director issued an RFE on May 30, 2014, advising the Petitioner that the initial evidence did not demonstrate that the Beneficiaries are an internationally recognized entertainment group and requesting that the Petitioner provide evidence of the Beneficiaries' international recognition as a group. In response, the Petitioner reiterated that '[REDACTED]' will be touring and performing "at the [REDACTED]" and that "while [Mr.] [REDACTED] . . . is the band leader and the lead vocalist of the group, [Mr.] [REDACTED] . . . is an important and very essential band member" because he "can play multiple instruments and play various roles within the band."

The Petitioner further explained that the full [REDACTED] normally consists of 12 band members, but that because "this is the group's first international tour outside of Africa, the group feel[s] confiden[t] that the lead and the main backup artiste will be up to the full task while the remaining band member's duties can be incorporated into a programmable keyboard, guitars and turntable. . . ." In response to the Director's RFE, the Petitioner provided the following: two award certificates given to Mr. [REDACTED] additional letters, articles,³ promotional flyers, and 14 photographs of Mr. [REDACTED] performing at various unidentified locations with other unidentified performers.

The Director denied the petition on July 18, 2014, concluding that the Petitioner did not establish that the Beneficiaries are members of an entertainment group that have been internationally recognized for a sustained and substantial period of time. The Director observed that there is no evidence to support the Petitioner's claim that the Beneficiaries have been performing together for several years, nor any evidence to establish that the Beneficiaries are members of an internationally recognized group. The Director concluded that the evidence does not establish Mr. [REDACTED] role in the group but, rather, pertains to Mr. [REDACTED] and indicates that he is "an individual performer."

On appeal the Petitioner asserts that the evidence of record, including additional evidence submitted on appeal, "further highlight[s] and addresses the stature, popularity and international recognition of the [REDACTED] as a band. . . ." The Petitioner also states that the "no objection" letter from the [REDACTED] "endorsed and approved the [REDACTED] as a band and Mr. [REDACTED] as the [REDACTED] band leader and Mr. [REDACTED] as a back-up member of the [REDACTED]." The Petitioner attached additional recommendation letters and photographs, as well as copies of previously submitted evidence.

Upon review, the Petitioner has not established that the two Beneficiaries are coming to the United States to perform with, or as an integral part of the performance of, an entertainment group. 8 C.F.R. § 214.2(p)(1)(ii)(A). The regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(2) require the Petitioner to provide a statement listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group. At the time of filing, the Petitioner affirmed that "the [REDACTED] consists of two members." The Petitioner briefly discussed Mr. [REDACTED] career and CDs, and stated that the "other member of his

³ The full text of one of the articles, [REDACTED] is not legible.

(b)(6)

band has performed regularly with him for at least three years.” As part of its initial evidence the Petitioner provided a list indicating that the two Beneficiaries are the only members of the group as of the date of filing. In response to the Director’s RFE, the Petitioner stated that while only two members would be touring the United States, the full [REDACTED] consists of 12 band members and that “[a]ll the members of the [REDACTED] . . . have been performing, travelling together within Africa regularly consistently for more than two years.”

The evidence of record, however, does not corroborate the petitioner’s assertions that Mr. [REDACTED] is a member in the [REDACTED]. The documentation the Petitioner provided establishes that Mr. [REDACTED] has received some national recognition as an artist and regularly performs with other musicians. For example, Mr. [REDACTED] first CD released in 2005, [REDACTED] and his third CD released in 2010, [REDACTED] show that he performed with the group [REDACTED] and promotional flyers for performances in April 2014 and November 2013 indicate he performed with the group [REDACTED]. However, none of the recommendation letters, promotional flyers, photographs or CDs specifically mentions Beneficiary [REDACTED] by name or confirms his membership in the [REDACTED]. Mr. [REDACTED] fourth CD in 2012, [REDACTED], does not specify he performed with a band.

Further, the 2010 Performing Agreement submitted at the time of filing does not support the Petitioner’s claim that the two Beneficiaries perform together as a unit. It explicitly identifies Mr. [REDACTED] as the only member of [REDACTED] under contract with the Petitioner. No additional evidence has been submitted to establish that Mr. [REDACTED] is under a similar contract or was added to the contract when he joined the band.

The Petitioner has not overcome these concerns on appeal. The Petitioner’s evidence on appeal consists of its statements regarding the composition of the group and additional letters and photographs that do not corroborate the Petitioner’s statements. Several of the letters affirm that they have known Mr. [REDACTED] “and his band” or “his [REDACTED]” for “over a decade,” but do not identify any members of the group other than Mr. [REDACTED]. The Petitioner has not adequately explained why no supporting evidence corroborating the composition of the group is available. 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)).

Finally, while the “no objection” letter from [REDACTED] 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), it does not demonstrate Mr. [REDACTED] membership in the band. Consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. 214.2(p)(7)(i)(D). [REDACTED] unsupported statement that that “[Mr.] [REDACTED] has a distinguished record of achievement that is appropriate for an internationally recognized Entertainment Group” is insufficient to establish that the Beneficiaries included in this petition are members of a group that has been established and performing regularly for a period of at least one year. 8 C.F.R. § 214.2(p)(4)(iii)(B). [REDACTED] does not explain how it reached this conclusion based on the evidence submitted with the petition. Accordingly, the Petitioner has not established that both Beneficiaries are members of a qualifying band.

(b)(6)

2. Internationally Recognized

The Petitioner has not submitted evidence that the group [REDACTED] has been nominated for or received significant international awards or prizes for outstanding achievements in its field. As noted by the Director, the petitioner provided copies of three awards won by Mr. [REDACTED] performing as [REDACTED] but none for the group [REDACTED]. Regardless, the Petitioner has not submitted documentation to establish that the awards or prizes are significant internationally.

Therefore, the Petitioner must establish that the group satisfies three of the evidentiary criteria set forth at 8 C.F.R. §§ 214.2(p)(4)(iii)(B)(3)(i)-(vi). The Director concluded that the Petitioner did not establish that the group satisfies any of the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). On appeal, the Petitioner provides a letter stating that its “original petition addressed satisfactorily all of the six major criteri[a].” Upon review, and for the reasons stated herein, the Petitioner has not established that the group meets any of these criteria. We will address the first and third criteria together as they are related, and the remaining criteria follow.

(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.

(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.

The Petitioner provided several articles and advertising flyers reflecting that Mr. [REDACTED] has performed at various events as a starring or leading entertainer in Africa. However, as noted by the Director, the Petitioner has not submitted any evidence pertaining to past performances of the group [REDACTED], or that confirms the Beneficiaries have performed together as part of the group [REDACTED]. Therefore, the Petitioner cannot establish that the group has performed as a starring or leading entertainment group in productions or events which have a distinguished reputation, or for organizations and establishments that have a distinguished reputation.

Additionally, the Petitioner included an itinerary indicating that the group will perform at several venues in the United States. The Petitioner’s initial letter of support stated that its “[REDACTED] U.S. summer tour “will include other bands as performing act[s].” The Petitioner has not provided contracts or other documentary evidence establishing that the group will perform as a starring or leading group in these productions. And the Petitioner has not submitted articles in newspapers, trade journals, publications or testimonials to demonstrate the distinguished reputation of the organizations and establishments where the Beneficiaries will perform. 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)(i) and (iii).

(b)(6)

(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.

The Petitioner has submitted several published articles about Mr. [REDACTED], but no articles addressing the recognition or acclaim of [REDACTED]. The Petitioner, therefore, has not provided documentation of international recognition and acclaim for outstanding achievements as evidenced by reviews in major newspapers, trade journals, magazines, or other published material. *See* 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(ii).

(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.

The Petitioner also has not provided evidence that the group has a record of major commercial or critical successes. Specifically, the Petitioner did not submit evidence of the group's 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. Rather, the Petitioner included evidence that Mr. [REDACTED] has performed and recorded CDs. The Petitioner has not documented commercial or critical success pursuant to 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(iv).

(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.

While the Petitioner includes various testimonial letters on appeal referring to Mr. [REDACTED], none of the persons who provided letters have explained whether [REDACTED] and [REDACTED] are the same entity, have recognized [REDACTED] achievements in the field, or have stated that both Beneficiaries have performed together as part of the group [REDACTED]. Pastor [REDACTED] of [REDACTED] and Rev. Dr. [REDACTED] of [REDACTED] state that [REDACTED] has demonstrated faithfulness to the promotion of core Christian and social values. Mr. [REDACTED] of the [REDACTED] record label describes [REDACTED] as a "known group." Even if [REDACTED] and [REDACTED] are the same entity, the statements of these individuals do not suggest that the group [REDACTED] has already achieved any significant recognition for its achievements.

Nor does the letter from [REDACTED] constitute evidence that [REDACTED] has achieved significant recognition for achievements in the field. Rather, as previously stated, the "no objection" letter from [REDACTED] 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). The [REDACTED] unsupported statement that the Beneficiaries' group "had a distinguished record of achievement that is appropriate for an internationally recognized Entertainment Group," is insufficient to establish that the group has achieved significant recognition for achievements in the field. Consultations are advisory and are not binding on

(b)(6)

USCIS. See 8 C.F.R. § 214.2(p)(7)(i)(D). Based on the above, the Petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(v).

(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.

Finally, the Petitioner stated on Form I-129 that the Beneficiaries' wages in the United States will be \$1,000 per performance.⁴ The Petitioner has not submitted any evidence to establish that the Beneficiaries as a group have either commanded a high salary or will command a high salary or other substantial remuneration for services comparable to other musical groups similarly situated in the field. The Petitioner has not provided evidence of other salaries in the field for comparison. 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 satisfy any of the six evidentiary criteria listed in the regulations at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3). Based on the forgoing, the Petitioner has not established that [REDACTED] has achieved sustained international recognition in the field. For this additional reason, we will dismiss the appeal.

IV. TRANSLATIONS

Beyond the decision of the Director, the Petitioner has not provided translations for certain foreign language articles. The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

V. CONCLUSION

The Petitioner has not demonstrated that the Beneficiaries included in this petition are members of a group that has been established and performing regularly for a period of at least 1 year. 8 C.F.R. § 214.2(p)(4)(iii)(B). In addition, the evidence submitted by the Petitioner has not satisfied 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 has not shown that the group has achieved sustained international recognition in the field.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

⁴ The petitioner also stated on Form I-129 that the proffered position is not a full-time position.

ORDER: The appeal is dismissed.

Cite as *Matter of F-I-G-, Inc.*, ID# 11762 (AAO Sept. 3, 2015)