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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: LIN-00-167-51311 Office: Nebraska Service Center Date: MAR 1 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(iii)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be summarily dismissed.

The petitioner in this matter is described as an ethnic club that sponsors an annual Irish festival. The beneficiary is a three-member musical group specializing in Irish folk music. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the group under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act") as an entertainment group that is culturally unique. The petitioner seeks classification of the musical group to perform over the three-day festival.

The director denied the petition finding that the petitioner failed to establish adequately that the beneficiary musical group met the standard for a "culturally unique" group under the pertinent regulations.

On appeal, a representative of the petitioner simply stated the reason for appeal was "Reconsideration of existing evidence for Petition for Nonimmigrant Worker Visa for [redacted]."

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

> (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
>
> (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

8 C.F.R. 214.2(p)(3) provides, in pertinent part, that:

> Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

8 C.F.R. 214.2(p)(6)(i) further provides:

> (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a

unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

8 C.F.R. 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

(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 petitioner clearly filed Form I-290B, Notice of Appeal, to the Administrative Appeals Office ("AAO"). However, the petitioner's statement on the form indicates an intent to file a Motion to Reconsider to the center director. Nevertheless, based on the filing of the I-290B, the matter must be adjudicated as an appeal.

The regulations require summary dismissal of any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. 103.3(a)(1)(v). Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, this appeal must be summarily dismissed.

On review of the record, certain facts in this matter merit administrative notice. First, in favor of the petition, the petitioner submitted a labor consultation from the American Federation of Musicians opining that the beneficiary group met the standards for cultural uniqueness. The director did not address this evidence in determining that the beneficiary did not qualify as a culturally unique group. Second, adverse to the petition, the petitioner did not submit a contract or specify the terms of the proposed employment. The director did not address this lack of required evidence as a basis for denial of the petition.

While the petitioner might be able to correct the record in this matter, it is noted that the proposed employment was for an event that was scheduled for June 23 to 25 of 2000. Therefore, the issue is substantially moot.

ORDER: The appeal is summarily dismissed.