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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: WAC-98-224-52079 Office: California Service Center Date: MAY 2 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

for Myra L. Rosenberg

Robert P. Wiemann, Acting Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. An appeal and a subsequent motion to reopen were rejected by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner, by and through the Director, Administrative Appeals Office, on a second motion to reopen. The motion will be dismissed.

The petitioner is an entertainment agency. The beneficiary is a professional acrobat. The petitioner seeks extension of the beneficiary's authorized stay in the United States in P-2 classification in order to continue to perform under a contract with Circus Circus Hotel/Casino in Reno, Nevada.

This matter has an extended procedural history. The record reflects that the beneficiary was admitted to the United States on November 21, 1997, in P-2 classification, with an authorized stay until August 30, 1998. The admission was pursuant to a petition filed by the [redacted].

The instant petitioner, [redacted] Inc., [redacted] President, filed a petition for extension of the beneficiary's stay on August 17, 1998. The petition was accompanied by a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, by [redacted], Esq. The entrance of Mr. [redacted] was authorized by the signature of Mr. [redacted] on the Form G-28.

The center director denied the petition in a decision dated January 6, 1999, finding that there was no evidence that the petitioner, MPY International, was a party to a qualifying formal reciprocal exchange agreement as required at 8 C.F.R. 214.2(p)(5)(ii)(A).

8 C.F.R. 214.2(p)(5)(ii) states, in pertinent part, that a petition for P-2 classification shall be accompanied by:

> (A) A copy of a formal reciprocal exchange agreement between the U.S. organization or organizations which sponsor the aliens and an organization or organizations in a foreign country which will receive the U.S. artist or entertainers.

An appeal was filed on February 5, 1999, by [redacted] as counsel for the beneficiary. Ms. [redacted] did not file a Form G-28. On April 27, 1999, the Director, Administrative Appeals Office, rejected the appeal for lack of standing by the beneficiary in the proceeding pursuant to 8 C.F.R. 103.3(a)(1)(iii).

Ms. [redacted] filed a motion to reopen the proceeding which was similarly rejected by the Director, Administrative Appeals Office, for lack of standing. Ms. [redacted] again failed to file a Form G-28.

Ms. [redacted] filed the instant motion on December 14, 1999. On motion it is argued that she submitted a Form G-28 "as far back as

January, 1999" and that the Service acknowledged her entrance by sending her Form 797Cs, Notice of Action. With the instant motion Ms. [redacted] submitted a Form G-28 dated February 2, 1999, signed by the beneficiary.

On review, the regulations are clear in this matter.

8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. **It does not include the beneficiary of a visa petition.** (emphasis added.)

8 C.F.R. 103.3(a)(2)(v) states:

> *Improperly filed appeal--(A) Appeal filed by person or entity not entitled to file it--(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

8 C.F.R. 103.5(a)(4) pertaining to motions in proceedings before the Service states, in pertinent part:

> A motion that does not meet applicable requirements shall be dismissed.

The petitioner in this matter is [redacted]. Its authorized representative is Mr. [redacted] Neither the beneficiary nor her representative have any standing in this proceeding. The record contains no evidence that Ms. [redacted] submitted a G-28 in her previous two actions. The Form 797Cs sent to Ms. [redacted] merely acknowledge receipt of her having filed a form and acceptance of her filing fee for the form. No legal standing is conferred based on this acknowledgement. Therefore, the motion must be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The motion is dismissed. The center director's denial of the visa petition dated January 6, 1999, is affirmed.