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

Public Copy

[redacted]

FILE: EAC-01-101-51994 Office: Vermont Service Center Date: OCT 17 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

Identifying 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

Lynn F. Rosenberg

for 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 record will be remanded.

The petitioner in this matter is a restaurant. The beneficiary is described as a three-member singing group. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of the beneficiary group under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1101(a)(15)(P)(iii), as an entertainment group who perform in a culturally unique program. The petitioner seeks to employ the group for a period of ten months to perform three nights per week in the restaurant.

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 center director denied the petition stating that the petitioner failed to respond to a written request for additional evidence. The record contains a copy of a notice dated February 21, 2001, requesting the petitioner to submit evidence establishing that the beneficiary will participate in a specific event or engagement.

Pursuant to 8 C.F.R. 103.2(b)(13), if all requested initial evidence and requested additional evidence are not submitted by the required date, the petition shall be considered abandoned and, accordingly, shall be denied. Pursuant to 8 C.F.R. 103.2(b)(15), a denial due to abandonment may not be appealed.

8 C.F.R. 103.2(b)(15) does allow a petitioner who receives a denial based on abandonment to file a motion to reopen. 8 C.F.R. 103.5(a)(2) states that a motion to reopen a petition denied due to abandonment must be filed with evidence that the decision was in error because:

> (i) The requested evidence was not material to the issue of eligibility;
>
> (ii) The required initial evidence was submitted with the petition, or the request for initial evidence or additional information was complied with during the allotted period; or
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> (iii) The request for additional information was sent to an address other than that on the petition, or the petitioner advised the Service in writing of a change of address subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

Although the center director advised the petitioner of appeal rights from the decision, the petition was abandoned and there are no appeal rights from that decision. Therefore, this office has no jurisdiction. The record will be remanded to the center director for consideration as a motion to reopen.

ORDER: The record is remanded.