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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: LIN 03 080 51867 Office: NEBRASKA SERVICE CENTER Date: AUG 20 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

PUBLIC COPY

SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The [redacted] filed a petition on its own behalf. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking classification of itself under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), as an entertainer in a culturally unique field.

The director denied the petition, finding that the musical groups seeking P-3 classification may not self-petition. The director further determined that the petitioner failed to provide the required consultation, and to establish that at least 75% of the band members had been actual band members for at least one year. The director also determined that the petitioner had failed to establish that it is a culturally unique entertainment group.

On appeal, the petitioner submits an amended Form I-129 petition and additional evidence.

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.

8 C.F.R. § 214.2(p)(6)(v) states that all petitions for P-3 classification shall be accompanied by a consultation with an appropriate labor organization.

The first issue raised by the director is whether a musical group seeking P-3 classification can self-petition. The regulations require that a P-3 petition be filed by the sponsoring organization or a United States employer. 8 C.F.R. § 214.2(p)(2)(i). The AAO concurs with the director that a musical group seeking P-3 classification may not self-petition. In response to the director's decision, the petitioner amended the petition to insert a new petitioner. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Bureau requirements. *Matter of Izummi,* 22 I&N 169 (Assoc. Comm., 1998). *See also* 8 C.F.R. § 103.2(b)(12). Accordingly, the petitioner's attempt to amend the petition may not overcome the basis for denial of the petition.

The next issue raised by the director is whether the petitioner is required to submit a consultation. The regulations require a consultation. 8 C.F.R. § 214.2(p)(2)(ii)(D). There is an exception to this requirement if no appropriate labor organization exists. The petitioner indicated that it had sought a consultation from the American Federation of Musicians in New York City, but failed to submit such a consultation to the Bureau. The petitioner has not overcome the director's objection to approving the

petition.

The director further determined that the petitioner failed to establish that at least 75% of the band members had been actual band members for at least one year. On appeal, the petitioner asserts "80% of the band has been with Mr. De Waij for over one year." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The final issue raised by the director is whether the petitioner established that it is a culturally unique entertainment group. According to the evidence on the record, the petitioner is comprised of musicians from the Netherlands, England, Hungary and Ghana that have gained a reputation in the classical rock genre. The petitioner has failed to establish that it is a culturally unique entertainment group.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.