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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]

File: WAC 02 152 50118 Office: CALIFORNIA SERVICE CENTER Date: FEB 13 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

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 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner in this matter is described as a producer and agent for entertainment groups. The beneficiary of the instant petition consists of sixteen members of a professional entertainment group known as [redacted] The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking P-1 classification of the sixteen members as an internationally recognized entertainment group under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act). The petitioner seeks to employ the beneficiary temporarily for approximately eleven months.

The acting director denied the petition finding that the petitioner failed to establish that [redacted] is an internationally recognized entertainment group eligible for P-1 classification.

On appeal, counsel for the petitioner submits a brief arguing that the entertainment group qualifies for the benefit sought.

Section 214(c)(4)(B)(i) of the Act, 8 U.S.C. § 1184(c)(4)(B)(i), provides, in pertinent part, that section 101(a)(15)(P)(i) 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.

In order to establish eligibility for P-1 classification as an entertainment group, a petitioner must satisfy each of several eligibility requirements.

8 C.F.R. § 214.2(p)(1) provides for classification of artists, athletes, and entertainers under a variety of circumstances:

> (i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country 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 a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team, or member of an internationally recognized entertainment group.

In the case of entertainers, the pertinent regulations also provide, in part, that individual alien performers may be admitted to the United States in P-1 classification as a member of an internationally recognized entertainment group. 8 C.F.R. § 214.2(p)(1)(i). The alien must maintain a foreign residence he or she has no intention of abandoning. *Id.* The alien may be admitted for a period not to exceed one year and the stay may be extended in increments of one year. 8 C.F.R. § 214.2(p)(8)(iii)(B). P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform independently. 8 C.F.R. § 214.2(P)(4)(iii)(A). At least 75 percent of the group must have had a minimum of one year relationship with the group. *Id.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The issue to be reviewed is whether the petitioner established that the entertainment group is internationally recognized within the meaning of 8 C.F.R. § 214.2(p)(3).

8 C.F.R. § 214.2(p)(1)(ii)(A) provides 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.

8 C.F.R. § 214.2(p)(3) define 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.

8 C.F.R. § 214.2(p)(4)(iii)(B) requires that a petition for members of internationally recognized entertainment groups must be accompanied by:

(1) Evidence that the group has been established and performing regularly for at least 1 year;

(2) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and

(3) Evidence that the group has been internationally recognized in the discipline for a sustained and substantial amount of time. This may demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field or by three of the following types of documentation:

(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;

(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;

(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;

(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;

(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; or

(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.

The petitioner furnished documentation that the group has been internationally recognized for a sustained period. The documentation consists of the following: a letter of invitation from a California radio station to perform at a public park; a letter of appreciation from a Tijuana radio station; a letter from a Los Angeles radio station attesting that the beneficiary is internationally known in Mexico and the United States; a letter verifying that the beneficiary would perform at the Fiesta del Mar celebration in Tijuana on August 8, 1999; a letter from a Mexican radio group dated June 30, 1997 stating that the beneficiary is one of the most well known bands in Mexico and that the beneficiary's music is aired at their station; a letter dated August 1, 1996 from the magazine *Furia Musical* indicating that they had interviewed the beneficiary on numerous occasions; a recording agreement between the beneficiary and a California recording company; and, four articles. One of the four articles mentions that the beneficiary would perform in an upcoming event. Another article consists of one paragraph about the beneficiary. A third article addresses the success the beneficiary enjoys. A fourth item appears in letter format and it is unclear whether it was published. As evidence of awards, the petitioner submitted seven certificates of participation in events.

In review, the petitioner has failed to establish that the beneficiary has demonstrated a degree of skill and recognition substantially above that ordinarily encountered in the field of entertainment and qualifies as "internationally recognized" within the meaning of section 101(a)(15)(P) of the Act. Evidence of broadcasting by radio stations and performing at private venues and public events is the norm for entertainment groups.

For criterion number one, the petitioner failed to establish that the beneficiary 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. The petitioner submitted copies of contracts with eight prospective venues, including the San Diego Convention Center. The San Diego Convention Center is the only prospective venue with a distinguished reputation. In a request for additional evidence, the director asked for a copy of a contract

with the San Diego Convention Center, among other things. In reply, counsel for the petitioner stated that "there is no contract in existence between the beneficiary and the San Diego Convention Center. Said agreements, in the music industry are generally executed between the promoter and the venue. Not between the entertainment group and the venue [sic]." The remaining venues[1] are much less well known and cannot be deemed to be distinguished. The beneficiary does not satisfy this criterion.

For criterion number two, the petitioner provided the Service with four articles. One article lists the beneficiary as a performer in an upcoming event. The second article has one paragraph about the beneficiary. A third article discusses the success that beneficiary has enjoyed. It is unclear whether the fourth item was ever published. In review, the first item cannot be considered a review. It merely mentions that the beneficiary would perform at a dance held at a rodeo. The second item is reprint from *Furia Musical* that quotes the beneficiary as saying that unity is most important. The third item may be considered a review, but was published by *El Sol de Tijuana*, a local newspaper. None of the items can be considered evidence that the beneficiary has achieved international recognition and acclaim for outstanding achievement in its field.

No evidence was submitted in relation to criterion number three.

For criterion number four, the petitioner provided the Service with illegible ratings. It is not clear whether the beneficiary even appears on the ratings provided.

For criterion number five, the petitioner submitted seven certificates for recognition for participation in events. The certificates are not persuasive evidence of the beneficiary's international recognition.

For criterion number six, the petitioner indicated that the beneficiary would receive $50,000 per performance. In the absence of relevant salary data, the petitioner failed to establish that the beneficiary's wages are high in comparison to the wages of entertainment groups with similar qualifications.

In review, the evidence fails to show that the beneficiary is an internationally recognized entertainment group eligible for P-1 classification.

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[1] They include Confetti's Night Club in Reno, NV: El Rey Night Club in Las Vegas, NV; Los Castillos Night Club in La Puente, CA; El Marisol Night Club, Chula Vista, CA; Palace de Oceanside, Oceanside, CA; El Nuevo Monterrey Night Club, Santa Ana, CA; and El Potrero Night Club in Gudahy, CA.

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. The appeal will be dismissed.

ORDER: The appeal is dismissed.