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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

MAR 3 1 2003

File: WAC 99 220 52834 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

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, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner in this matter is a Mexican restaurant located in a hotel. The beneficiary is a three-piece band. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking an extension of stay of the beneficiary for an additional two-year period under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner seeks to continue to employ the beneficiary temporarily in the United States at a weekly rate of $1500.

The director denied the petition, in part, finding that the petitioner failed to establish that beneficiary has been internationally recognized in the discipline for a sustained and substantial amount of time.

On motion, counsel for the petitioner submits a brief and additional documentation.

Section 101(a)(15)(P)(i) of the Act, provides classification to a qualified alien having a foreign residence which the alien has no intention of abandoning who performs with or is an integral or essential part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with the group over a period of at least one year.

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

> (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 ... [a] member of an internationally recognized entertainment group.

P-1 classification is accorded to the entertainment group as a unit, and is not available to individual members of the group to perform separate and apart from a group. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except as provided in 8 C.F.R. § 214.2(p)(4)(iii)(C)(2) relating to certain nationally known

entertainment groups, it must be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of one-year relationship with the group and must provide functions integral to the group's performance. *Id.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The first issue raised by the director is whether the petitioner established that the beneficiary has been internationally recognized in the discipline for a sustained and substantial amount of time.

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) defines 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 be 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 the following documentation to the Bureau: the representative's cover letter; a job offer and contract from the petitioner; evidence of the beneficiaries' membership in a Mexican music union; letters of recommendation from previous employers; photographs of the beneficiaries performing; and a consultation letter from the American Federation

of Musicians. It is noted that the consultation letter expresses no objection to the granting of a P-3 petition for the beneficiaries, whereas the petitioner filed the instant petition seeking P-1 classification for the beneficiaries. On motion, the petitioner provided the following additional documentation: a letter from the president of the petitioner stating that the beneficiary has enhanced their advance group bookings; a contract promising $450 per shift in compensation; a letter from a musician indicating his opinion as to average wage rates in Las Vegas; and a recording contract between the beneficiary and a recording studio.

In review, the evidence of record is insufficient to establish that the beneficiary has been internationally recognized in the discipline for a sustained and substantial amount of time. The petitioner failed to provide any evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievements in its field. The petitioner failed to provide evidence meeting at least three of the criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i) through (v). In the absence of salary surveys, the petitioner has failed to establish that the beneficiary has either commanded a high salary or will command a high salary comparable to others similarly situated in the field.

Beyond the decision of the director, the petitioner failed to provide the Bureau with an appropriate consultation. The petitioner submitted a consultation for P-3 visa classification, even though the petitioner is seeking P-1 classification for the beneficiaries. As the appeal is decided for the reasons cited above, this issue will not be discussed further.

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 failed to meet that burden.

ORDER: The decision of the AAO dated February 28, 2001 is affirmed.