



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-M-G-

DATE: JAN. 24, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a music group, seeks to classify the Beneficiaries, partners in a film company, as a member of an internationally-recognized entertainment group. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(i)(b), 8 U.S.C. § 1101(a)(15)(P)(i)(b). This P-1B classification makes visas available to foreign nationals who perform as a member of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time. Section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiaries are members of an internationally recognized entertainment group.

On appeal, the Petitioner asserts that it has corroborated its own accomplishments and the Beneficiaries' "talent as documentary filmmakers."

Upon *de novo* review, we will dismiss the appeal.

I. LAW

P-1 classification authorizes a foreign national beneficiary to come to the United States temporarily to perform services as a member of an internationally recognized entertainment group for a U.S. employer or sponsor.¹ Section 101(a)(15)(P)(i)(b) of the Act; 8 C.F.R. § 214.2(p)(1)(i). The benefit is accorded to an entertainment group as a unit. 8 C.F.R. § 214.2(p)(4)(iii)(A). Except for the limited circumstances provided for 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 beneficiary group has been internationally recognized as outstanding for a sustained and substantial period of time, and at least 75 percent of the group must have had a minimum of a one-year relationship with the group and must provide functions integral to the group's performance. *Id.*

¹ A U.S. agent can act on behalf of a foreign employer. 8 C.F.R. § 214.2(p)(1)(iv)(E)(3).

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) clarifies that the classification is for a beneficiary:

- (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.

The regulation at 8 C.F.R. § 214.2(p)(3) defines international recognition as “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.”

The regulation at 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 a period of 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 [set forth in subparagraphs (i) through (vi)].

Additionally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires written contracts or, if none, a summary of the terms of the oral agreement, an itinerary, and a written consultation from a labor organization.

Finally, we have held that, “truth is to be determined not by the quantity of evidence alone but by its quality.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Id.*

II. ANALYSIS

The Petitioner is an entertainment group that seeks to facilitate the Beneficiaries’ entry into the United States to explore the possibility of an eventual documentary about the Petitioner. It specifies that it will not compensate the Beneficiaries. The only evidence pertaining to the Beneficiaries is a

printout from the [REDACTED] database confirming that they are the directors of [REDACTED]. The documentation addressing the criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i)-(vi), of which *the Beneficiaries* must meet at least three, all relates to the petitioning group. Accordingly, the Director concluded that the Petitioner had not established that the Beneficiaries are members of a qualifying group with international recognition. On appeal, the Petitioner notes that it constitutes an entertainment group and that the Beneficiaries are “the benefactors.” It affirms that it has demonstrated its own accomplishments and the Beneficiaries’ talent as documentary filmmakers.

Regardless of whether the Petitioner happens to be an entertainment group itself, at issue is whether the Beneficiaries are members of a qualifying entertainment group that is internationally recognized. The visa classification sought allows foreign national members of entertainment groups to perform services in the United States for a U.S. employer, sponsor, or agent; it is not for U.S. entertainment groups to facilitate the entry of foreign nationals to perform uncompensated exploratory services. The Petitioner’s reputation is not determinative of whether the Beneficiaries are members of a qualifying group with international recognition coming to perform services for a U.S. employer, sponsor, or agent.

A. Group

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(1), (2) provides that a petition for P-1 classification for the foreign national members of an entertainment group (the beneficiaries) shall be accompanied by evidence that the beneficiary group has been established and performing regularly for a period of at least one year; and 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. The printout from [REDACTED] does not include all of this information; rather it confirms only that the two Beneficiaries are currently directors of the film company. Accordingly, the Petitioner has not demonstrated that the Beneficiaries are qualifying members of an entertainment group as required.²

B. International Recognition

The regulation at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3)(i)-(vi) lists the type of evidence a petitioner must provide to show that *the beneficiaries’* group enjoys international recognition. The list includes documentation of performances as a starring or leading entertainment group in productions or events with a distinguished reputation or for prestigious organizations or establishments; reviews indicative of international recognition; commercial or critical success; significant recognition; and high salary. The Petitioner verified its own accomplishments, but not those of the Beneficiaries. Specifically, the print out from [REDACTED] does not address any of those criteria. Thus, the Petitioner has not demonstrated that the Beneficiaries are members of an internationally recognized entertainment group as required. Once again, whether or not the Petitioner is an internationally recognized entertainment group is not determinative of the Beneficiaries’ eligibility.

² Given that the Petitioner has offered little information about the Beneficiary’s business, we will not address whether a documentary film production company can ever qualify as an entertainment group.

C. Contract

The regulation at 8 C.F.R. § 214.2(p)(3) defines a contract as “the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.” The regulation at 8 C.F.R. § 214.2(p)(2)(ii) allows for the submission of a summary of an oral agreement if no written contract exists. The Petitioner did not include a contract between itself and the Beneficiaries. It also did not offer a summary of an oral agreement, stating instead that it would not compensate them. Accordingly, the Petitioner has not provided the required documentation.

D. Other Issues

On appeal, the Petitioner references the possibility of the Beneficiaries seeking a “visa waiver” and requests advice for a more appropriate classification if this petition is not approvable. The Ninth Circuit has determined that once U.S. Citizenship and Immigration Services (USCIS) concludes that a beneficiary is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the beneficiary is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 286 Fed. Appx. 963 (9th Cir. July 10, 2008). While it appears from the Petitioner’s appellate statement that it may not have received sufficient advice at a USCIS district office, the adjudication of an appeal is, unfortunately, not the proper venue to offer guidance as to which of the many existing nonimmigrant classifications might better fit the Beneficiaries’ situation.

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiaries are qualifying members of a group or that the group is internationally recognized. The Petitioner also did not provide the requisite contract.

ORDER: The appeal is dismissed.

Cite as *Matter of B-M-G-*, ID# 828246 (AAO Jan. 24, 2018)