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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Dg.

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2010

IN RE: Petitioner: [Redacted]
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)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner, an entertainment and concert promotion company, filed the Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiaries under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), as an internationally recognized entertainment group known as "Ofori Amponsah and Group." The petitioner seeks to hire the beneficiaries for a period of three months.

The director denied the petition, concluding that the petitioner failed to establish that the group has been established and performing regularly for a period of at least 1 year or that the group has been internationally recognized in the discipline for a sustained and substantial period of time. The director observed that all of the submitted evidence pertains solely to one beneficiary and refers to him as a solo or individual artist, and that no evidence was submitted to establish that the nine beneficiaries are a group.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director overlooked previously submitted evidence which demonstrates that the beneficiaries have performed together as a group. Counsel submits a brief and a statement from the principal beneficiary in support of the appeal.

I. The Law

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence 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 sponsor. Section 214(c)(4)(B)(i) of the Act, 8 U.S.C. 1184(c)(4)(B)(i), provides that section 101(a)(15)(P)(i)(b) 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.

The regulation at 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 the group. 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 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.* The petitioner bears the burden of proof in establishing that each of these requirements has been satisfied.

The regulation at 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.

The regulation at 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.

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:

- (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.

II. Discussion

The sole issue to be addressed in this proceeding is whether the petitioner established that the group [REDACTED] [REDACTED] has been established and performing regularly for a period of at least one year. The petitioner must establish that at least 75 percent of the group members have a sustained and substantial relationship with the group.

The petitioner filed the nonimmigrant petition on August 7, 2009. The petitioner attached photographs of the beneficiaries, indicating the role of each individual within the group:¹

¹ The AAO notes that the petitioner also included [REDACTED] bodyguard and manager/personal assistant among the beneficiaries whose photographs were provided. The bodyguard was not included in the petition. The manager/personal assistant was listed on the Form I-129, but the director subsequently informed the petitioner that it must file a separate petition for this individual requesting that he be classified as essential support personnel.

[REDACTED]

The AAO notes that there were two inconsistencies between the petitioner's list and the information completed on the Form I-129, Petition for a Nonimmigrant Worker. The petitioner identified one of the beneficiaries as [REDACTED] on Form I-129, but did not include [REDACTED]. The petitioner also included a beneficiary named [REDACTED] on the Form I-129, but not in the above-referenced group list. In addition, there is no [REDACTED] listed on the Form I-129.

The petitioner submitted copies of the biographical pages of the passports for the persons listed on the Form I-129, some of which contain information regarding the beneficiaries' professions. The AAO notes that the passports for [REDACTED] identify them as musicians by profession. [REDACTED] indicates his profession as "sales manager" and [REDACTED] indicates his profession as "housekeeper."

All of the initial evidence regarding the group's international recognition pertained solely to [REDACTED], who appears to be a solo artist in his native country of Ghana.

The AAO notes that the petitioner did not submit 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, as required by 8 C.F.R. § 214.2(p)(4)(iii)(B).

The director issued a request for additional evidence on August 12, 2009. The director advised the petitioner that the initial evidence did not demonstrate that the beneficiaries are an internationally recognized entertainment group, as all of the evidence pertained solely to one member of the group. The director requested that the petitioner provide the name of the group and evidence that the group has been established and performing regularly for a period of at least one year. The director also requested that the petitioner provide evidence of the beneficiaries' international recognition as a group, rather than evidence regarding [REDACTED] alone.

In response, counsel for the petitioner stated:

[REDACTED] is a national musical icon and a much sought after entertainer internationally. Over the years, as customary for most entertainers, he always put together a group of instrumentalist and backup singers to embark on most of his international tours. Upon information and belief, [REDACTED] has been performing with the his [sic] group which comprise of professional musicians in their own right to bring out the best form live [sic] entertainment to their audience.

For the past three (3) years he has been performing both nationally and internationally in an award winning environments with the following musicians: [REDACTED]

[REDACTED]

singer and percussionist). Also included is [REDACTED] a long time personal security of [REDACTED]

The petitioner did not submit any additional documentary evidence pertaining to the beneficiaries as a group. The petitioner did submit a DVD which is labeled [REDACTED]

The director denied the petition on October 7, 2009, concluding that the petitioner failed to establish that the beneficiaries are an entertainment group that have been internationally recognized for a sustained and substantial period of time. The director observed that, although counsel claims that the beneficiaries have been performing together for three years, there is no evidence to support this claim, nor any evidence to establish that the beneficiaries are internationally recognized as a group. The director again emphasized that all of the evidence pertains to one beneficiary and refers to him as an individual artist.

On appeal, counsel for the petitioner asserts that the director failed to consider the DVD submitted in response to the RFE, which counsel states provides "important evidence showing the members of the group in a concert performance." Counsel notes that it "is an indisputable fact that musician performers do not and indeed cannot perform alone," and states that the beneficiary must be assisted by a group of musicians who regularly play instruments for him. The petitioner re-submits the above-referenced DVD in support of the appeal, along with a "Video CD" labeled [REDACTED]

In addition, the petitioner submits a signed statement from [REDACTED], who states that he has a group of instrumentalists and backup singers who regularly practice and play for him, and which includes: [REDACTED]

[REDACTED]. He states that all of these individuals are members of the [REDACTED] and popularly called "[REDACTED]" [REDACTED] also states that he has been working with this group of musicians for more than one year and traveled to many [REDACTED] countries with them. Finally, he states that [REDACTED] citizens of [REDACTED] countries are not required to obtain visas for travel to other [REDACTED] countries so we don't have visas to verify these international travels."

The petitioner submits copies of pages from [REDACTED]'s passport as evidence that he has obtained work visas to perform in Canada and Europe, but does not include visas for any of the purported group members.

Upon review, the petitioner has not established that the group has been established and performing regularly for a period of at least one year. As noted above, the petitioner must establish that at least 75 percent of the group members have a sustained and substantial relationship as a group.

The evidence of record is sufficient to establish that [REDACTED] is internationally recognized as a solo artist, and the AAO does not doubt that he regularly performs with other musicians. However, it is the petitioner's obligation to establish through documentary evidence that at least 75 percent of the beneficiaries included in this petition have regularly performed as his band for at least one year.

The petitioner's evidence in this regard is deficient for several reasons. First, as noted above, there are inconsistencies in the record with respect to the composition of the group. The petitioner identified one of the beneficiaries as '██████████' on Form I-129, but did not identify this individual on its separate list of band members, nor provide evidence that '██████████' and '██████████' are the same person. The petitioner also included a beneficiary named '██████████' on the Form I-129, but not in its separate group list. In addition, there is no '██████████' listed on the Form I-129, but he is identified as a member of the band. Given these unexplained inconsistencies, the AAO could not find that any of these individuals have been in the band for the requisite period of time.

Second, the AAO notes that the petitioner failed to submit prior to the adjudication of the petition the required 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, as required by 8 C.F.R. § 214.2(p)(4)(iii)(B)(2).

Third, despite the director's specific request for evidence that the group has been established and performing together for a period of at least one year, the petitioner provided only a DVD of a concert performance that took place in December 2008, less than one year prior to the filing of the petition. Even if 75 percent of the beneficiaries could be positively identified based on the recorded performance, this evidence would not establish that the band has been performing together regularly for at least one year as of the date the petition was filed in August 2009.

Finally, the petitioner's attempt to overcome these deficiencies on appeal falls significantly short of meeting the petitioner's burden of proof. The petitioner's evidence on appeal consists of '██████████' unsupported statements regarding the composition of his band, but he has not adequately explained why no supporting evidence corroborating the composition of the group is available. For example, he states that the group is "popularly called '██████████'". If this is the case, it should be possible for the petitioner to submit documentary evidence advertising the group in this manner. The fact that the beneficiary titled one of his albums '██████████' is insufficient. Moreover, the petitioner still has not provided a listing of group members that matches the information provided on the Form I-129, nor provided the exact dates for which each member has been employed on a regular basis by the group. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not submitted evidence on appeal to overcome the grounds for denial of the petition. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proof 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.