U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24059151

Date: JAN. 20, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, a company, seeks to classify the Beneficiaries – who are members of the musical group [redacted] – as members of an internationally recognized entertainment group. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(P)(i)(b), 8 U.S.C. § 1101(a)(15)(P)(i)(b). This P-1 classification makes nonimmigrant visas available to individuals who perform as members 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)(i) of the Act, 8 U.S.C. § 1184(c)(4)(B)(i).

The Director of the California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker on two grounds. First, the Director concluded that the Petitioner did not establish that it was authorized to act as an agent for the Beneficiaries' purported U.S. employers. *See* 8 C.F.R. § 214.2(p)(2)(iv)(E) (2022). Second, the Director concluded that the Petitioner did not demonstrate that the group was internationally recognized in the discipline for a sustained and substantial period of time. Specifically, the Director determined that the Petitioner did not submit evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field or evidence meeting at least three of the six criteria listed under 8 C.F.R. § 214.2 (p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

On appeal, the Petitioner explains that it is not an agent for any purported U.S. employer. Instead, it "is the [a]gent and employer of [the Beneficiaries]." In addition, the Petitioner maintains that it has offered letters, magazine articles, and other materials demonstrating that the musical group meets at least three of the six criteria listed under 8 C.F.R. § 214.2 (p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Under Section 101(a)(15)(P)(i) of the Act, a noncitizen 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)(I) of the Act provides that Section 101(a)(15)(P)(i)(b) of the Act applies to an individual who "performs with or is an integral and essential 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."

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A)(*2*) specifies that a P-1 classification applies to a noncitizen who is coming temporarily to the United States:

> To perform with, or as an integral and essential 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 had 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 P-1 classification is accorded to the entertainment group as a unit, based on the international reputation of the group, 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,[1] the petitioner must establish that the group has been internationally recognized as outstanding for a sustained and substantial period of time. 8 C.F.R. § 214.2(p)(4)(iii)(A). 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)(*3*) specifies that a petitioner must present evidence that the group has been internationally recognized in the discipline for a sustained and substantial period of time. Specifically, the regulation provides:

> Evidence that the group has been internationally recognized in the discipline for a sustained and substantial period 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 achievement in its field or by three of the following different types of documentation:

[1] For example, the Director may waive the international recognition requirement if an entertainment group finds it difficult to demonstrate recognition in more than one country due to such factors as limited access to news media or consequences of geography. 8 C.F.R. § 214.2(p)(4)(iii)(C)(*2*).

(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 critically acclaimed 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.

8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*).

II. ANALYSIS

On appeal, the Petitioner maintains that it is not an agent for the Beneficiaries' purported U.S. employers. Rather, it is the Beneficiaries' employer. The record includes a January 2022 "Professional Services Contract," executed by the Petitioner's general manager and one of the Beneficiaries acting on behalf of the musical group. The contract indicates that the Petitioner is hiring the Beneficiaries, who are members of the musical group [redacted] to perform in the United States and will pay the group "a minimum of $6,000.00 per venue date." This document supports the Petitioner's contention that it filed the petition as the Beneficiaries' employer, not as an agent of the purported employers. As such, the Petitioner need not show that it is authorized to act as an agent for the Beneficiaries' purported U.S. employers. *See* 8 C.F.R. § 214.2(p)(2)(iv)(E).

The Petitioner, however, has not submitted sufficient evidence of the musical group's nomination for or receipt of significant international awards or prizes for outstanding achievements, or presented

documentation that satisfies any of the six criteria listed under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*), of which it must meet at least three. The Director explained in the decision that while the Petitioner had offered some evidence relating to the criteria under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*), (*iv*), and (*v*), the record was insufficient to establish that the Beneficiaries satisfied any of these criteria.[2] On appeal, the Petitioner does not specifically indicate which three of the six criteria it meets under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*). Additionally, it does not specifically challenge the Director's finding that its evidence fails to show that it satisfies criteria under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*), (*iv*), and (*v*), and that it has not offered evidence relating to the remaining criteria under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*ii*), (*iii*), and (*vi*). We will therefore deem these issues waived. *See*, *e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Even if we do not find that the Petitioner has waived the abovementioned issues, we would nonetheless dismiss the appeal. On appeal, the Petitioner states, without citing or referencing any regulatory criteria: "Information provided shows [redacted] [has been a] lead or starring participant in distinguished productions, has significant recognition and remuneration, [and that] three of six criteria have been met." As the Petitioner claims that the musical group has been a "lead or starring participant in distinguished productions," it appears to allege that the Beneficiaries meet the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*). The record, however, does not support this contention.

Specifically, while the Petitioner has offered documentation, such as fliers and letters, showing that the Beneficiaries have performed and will perform in productions or events, the Petitioner has not provided evidence such as critical reviews, advertisements, publicity releases, publications, contracts, or endorsements, confirming that such productions or events have a distinguished reputation. For example, in an undated letter, the music programmer for a radio station in Oregon stated that the station invited the Beneficiaries to perform in a festival, but the record lacks additional information regarding the festival's reputation. Another letter from a broadcasting company indicates that the group "will soon be part of one of the events sponsored by [its] radio station," but does not discuss the reputation of the event. Other evidence similarly does not demonstrate that the Beneficiaries have performed or will perform in productions or events that have a distinguished reputation. The Petitioner therefore has not satisfied the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*).

The Petitioner also claims on appeal that the musical group [redacted] has "significant recognition and remuneration." It appears to allege that the Beneficiaries meet the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*vi*). The "Professional Services Contract" indicates that the group will receive "a minimum of $6,000.00 per venue date." Other documents, including "[redacted] Agreement[s]," indicate that venues in the United States will pay between $7,000 and $9,500 for each day of the group's performance. While the record provides information on the Beneficiaries' remuneration, it does not sufficiently show 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." 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*vi*). Specifically, the Petitioner has not offered salary or remuneration information concerning others in the field,[3] to which a comparison to the

[2] The Director explained that the Petitioner did not present evidence relating to the remaining criteria, specifically, those listed under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*ii*), (*iii*), and (*vi*).

[3] According to a letter from the American Federation of Musicians, the Beneficiaries' music is in the "Regional Mexican field." According to a letter from an American radio station, the Beneficiaries' group "represents [the] Mexican Regional [m]usic."

Beneficiaries' remuneration could be conducted. The Petitioner therefore has not satisfied the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*vi*). In short, the Petitioner has not shown, by a preponderance of the evidence, that it has satisfied any of the six criteria. *See* 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

III. CONCLUSION

The Petitioner has not shown that it has submitted documents that meet at least three of the six evidentiary criteria listed under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*). Consequently, it has not established its eligibility to classify the Beneficiaries as P-1 nonimmigrant members of an internationally recognized entertainment group.

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.