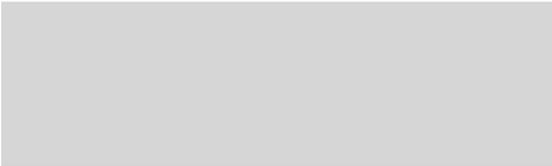




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 08 2015** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will summarily dismiss the appeal.

The petitioner, a not-for-profit performing arts organization, filed the nonimmigrant petition seeking classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii) as entertainers in a culturally unique program.

The director denied the petition, concluding that the petitioner did not submit as initial evidence contracts between the petitioner and several of the beneficiaries specifying the terms and conditions of employment. The director also denied the petitioner's request to substitute two beneficiaries, finding that it constituted a material alteration which would require the filing of an amended or new petition. The director further concluded that several of the beneficiaries are not performers, but rather serve as support personnel for the performers, requiring the filing of a separate petition for such aliens pursuant to the regulations at 8 C.F.R. § 214.2(p)(2)(i).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that its claims are substantiated by the evidence of record, and requests approval of the petition based on further documentation the petitioner submits on appeal.

I. Pertinent Law and Regulations

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation extends the P-3 classification for aliens who provide essential support to the principal P-3 artists or entertainers. The regulation at 8 C.F.R. § 214.2(p)(3) states, in pertinent part:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [sic] alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

With respect to the filing of P classification petitions in general, the regulation at 8 C.F.R. § 214.2(p)(2)(i) states, in pertinent part:

Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

II. Factual and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 15, 2014. The petitioner indicated on the petition that it seeks to employ 35 beneficiaries as performers in a musical production about South African, “[REDACTED]” for the period from September 29, 2014 to April 30, 2015. The supporting initial evidence included a list of 36 cast

members. The director noted in the RFE that the petitioner did not provide a Form I-129 attachment or a signed contract for cast member [REDACTED] who was included on the initial cast member list. We note that Mr. [REDACTED] is referred to in several submitted articles as a music producer for the group's 2008 and 2012 tours. In response to the director's RFE, the petitioner submitted an amended list of 34 cast members which no longer included cast members [REDACTED] and [REDACTED]. The petitioner also requested an amended validity period, consistent with the submitted itinerary, from October 2, 2014 to January 10, 2015.

The director denied the petition on September 24, 2014, concluding, as previously stated, that the petitioner did not submit as initial evidence contracts between the petitioner and several of the beneficiaries specifying the terms and conditions of employment. The director also denied the petitioner's request to substitute two beneficiaries, finding that it constituted a material alteration which would require the filing of an amended or new petition. The director further concluded that four of the beneficiaries, a narrator, company manager, wardrobe manager and lighting engineer, are not performers, but rather serve as support personnel for the performers, therefore, the director determined that those beneficiaries were essential support personnel and that the regulations at 8 C.F.R. § 214.2(p)(2)(i) require a separate petition for such aliens.

III. Analysis

Upon review, the evidence of record supports the director's decision. On appeal, the petitioner does not identify any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. In fact, the petitioner does not identify any erroneous adverse finding in the director's decision.

On appeal, the petitioner explains why it could not obtain all the beneficiaries signed contracts prior to the date of filing and why they have requested a substitution of two of the beneficiaries. However, the petitioner does not challenge the director's determination that the petitioner had not established those beneficiaries' eligibility as of filing. Moreover, the petitioner does not address the director's finding that the petition is not approvable as filed due to the inclusion of beneficiaries that are not members of the entertainment group. Inasmuch as the petitioner has not identified specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

Finally, we note that the petitioner has subsequently resolved all the pertinent issues with a new filing. A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that subsequent to the denial of the instant petition, the petitioner submitted a new Form I-129 on the beneficiaries' behalf ([REDACTED]). USCIS records further indicate that the director approved this second petition granting the beneficiaries P-3 status until January 10, 2015.

In visa petition proceedings, the burden of proving eligibility for the benefit sought is with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not satisfied that burden.

ORDER: The appeal is summarily dismissed.