U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22569808

Date: NOV. 21, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for 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).

According to a service contract, the Petitioner seeks to temporarily employ the Beneficiaries to perform as musicians in restaurants and music events in New Jersey, and to pay them $15,000 for their performances. The Director of the Vermont Service Center denied the Form I-129, Petition for Nonimmigrant Worker, concluding that the Petitioner did not establish, as required, that the group has been 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*) (2022).

On appeal, the Petitioner "ask[s] for a Waiver of Recognized Internationally due to [the] covid-19 pandemic for the last 2 years" (capitalization in original), noting that "[a]ll the documents, interviews, flyers, recognitions, achievements are older due to the covid-19" pandemic. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] Upon *de novo* review, we will dismiss the appeal.

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

I. LAW

Under Section 101(a)(15)(P)(i) of the Act, a foreign national 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 provides that Section 101(a)(15)(P)(i)(b) of the Act applies to an individual 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)(ii)(A)(*2*) specifies that a P-1 classification applies to a foreign national 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,[2] 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.

[2] 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*).

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. This may be demonstrated by evidence of the group's nomination for or receipt of significant international awards or prizes for outstanding achievements, or documentation that satisfies at least three of six criteria listed under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

II. ANALYSIS

As noted, the Director denied the petition, finding that the record lacks evidence of the musical group [redacted] nomination for or receipt of significant international awards or prizes for outstanding achievements. In addition, the Director determined that the Petitioner did not submit 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 Petitioner appeals, indicating that U.S. Citizenship and Immigration Services (USCIS) had previously approved a nonimmigrant P-1 petition classifying the Beneficiaries as members of an internationally recognized entertainment group. Additionally, the Petitioner asserts that "[t]he main rejection in the letter states that the group is not internationally recognized," and requests for a waiver of the international recognition requirement under 8 C.F.R. § 214.2(p)(4)(iii)(C)(2).

A. Waiver of the International Recognition Requirement

As explained above, in general, a petitioner who seeks to classify individuals as nonimmigrant P-1 members of an internationally recognized entertainment group must demonstrate 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). However, under 8 C.F.R. § 214.2(p)(4)(iii)(C)(*2*):

> . . . The Director may waive the international recognition requirement in the case of an entertainment group which has been recognized nationally as being outstanding in its discipline for a sustained and substantial period of time in consideration of special circumstances. An example of a special circumstances would be when an entertainment group may find it difficult to demonstrate recognition in more than one country due to such factors as limited access to news media or consequences of geography.

While the Petitioner seeks a waiver of the international recognition requirement on appeal, it has not satisfied the requirements under 8 C.F.R. § 214.2(p)(4)(iii)(C)(*2*). *See also* 2 *USCIS Policy Manual* N.2(A)(3), https://www.uscis.gov/policy-manual/volume-2-part-n-chapter-2. In a February 2022 letter, the owner of the petitioning entity, [redacted] states that the Covid-19 pandemic "has forced us to stop all kind of events [and] presentations." The Petitioner, however, has not offered evidence confirming that the musical group [redacted] has been recognized nationally in Mexico as being outstanding in its discipline for a sustained and substantial period of time. It also has not presented evidence of any special circumstances, such as the group has difficulty showing international recognition

because it has limited access to news media or because of consequences of geography. As such, the Petitioner has not shown its eligibility for a waiver of the international recognition requirement.

B. Evidentiary Criteria

On appeal, the Petitioner does not challenge the Director's finding that it has not demonstrated that the musical group [redacted] has been nominated for or received significant international awards or prizes for outstanding achievement in its field. *See* 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*). Additionally, the Petitioner has not specifically claim on appeal which of the criteria under 8 C.F.R. § 214.2 (p)(4)(iii)(B)(*3*)(*i*)-(*vi*) that its supporting documentation meets.

In an undated letter, [redacted] makes general statements about the musical group, noting that the group "has been approved by the American Federation of Musicians of the United States and Canada," it has "managed to record at least 28 albums," "Youtube.com has [its] musical clips with more than 2 million reproductions," it is "a lead group in all of [its] events," and has an "international presence in Latin America." He also states that the record includes "letters of intent of promoting musical events from different venues." Some of these statements and associated evidence might be relevant to certain elements of the six criteria, but they do not establish that the Petitioner has satisfied any of the criteria. *See* 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

For example, as relating to the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*i*), the record contains flyers, advertisements, and promotional materials indicating that the musical group has performed in various events and venues, but the record lacks sufficient evidence confirming that these events and venues "have a distinguished reputation." Additionally, according to the service contract between the musical group and the Petitioner, the group intends to perform in two restaurants that [redacted] owns in the United States, but the record fails to confirm that the productions or events at the restaurants have a distinguished reputation. As relating to the criterion under 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*iv*), while the record includes documentation of the group's receipt of awards, the Petitioner has not submitted sufficient evidence confirming the significance of the awards or demonstrated that the awards along with other materials in the record illustrate that the group "has a record of major commercial or critically acclaimed successes." Similarly, as relating to the criterion on 8 C.F.R. § 214.2(p)(4)(iii)(B)(*3*)(*v*), although the Petitioner references a January 10, 2022, letter from the American Federation of Musicians of the United States and Canada, the letter fails to sufficiently establish that the group "has achieved significant recognition for achievements" and fails to "clearly indicate[] the author's authority, expertise, and knowledge of the [group's] achievements," as required under the regulation.

As discussed, the Petitioner has not specifically claim on appeal which of the criteria its documentation meets and has not identified specifically any erroneous conclusion of law or statement of fact concerning the Director's decision. *See* 8 C.F.R. § 214.2 (p)(4)(iii)(B)(*3*)(*i*)-(*vi*); *see also* 8 C.F.R. § 103.3(a)(v) (noting that we "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"). Additionally, the record supports the Director's finding that the Petitioner has not met at least three of the six criteria listed under 8 C.F.R. § 214.2 (p)(4)(iii)(B)(*3*)(*i*)-(*vi*).

C. Prior Approval

On appeal, the Petitioner notes that USCIS has approved other petitions that it previously filed on behalf of the Beneficiaries. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

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. Section 291 of the Act; *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.