

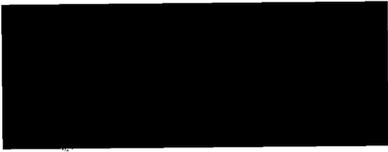


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



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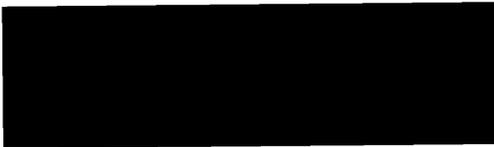
MAY 22 2001

File: LIN-00-200-50293 Office: Nebraska Service Center Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a private fencing academy. The beneficiary is a former competitive fencer and pentathlon athlete who is currently teaching/coaching fencing. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act"). The petitioner seeks to employ the beneficiary temporarily in the United States as a "fencer" for a period of five years.

In the decision, the director denied the petition finding that the petitioner failed to establish that the beneficiary was coming to the United States to compete in a specific event. The director further found that the petitioner had not submitted a written contract and a written labor consultation as required by the regulations.

On appeal, counsel for the petitioner submitted a written opinion from the U.S. Modern Pentathlon Association and additional statements from two U.S. experts in the sport attesting to the beneficiary's qualifications.

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)(A) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. 214.2(p)(1)(ii) provides for P-1 classification of an alien:

(1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

8 C.F.R. 214.2(p)(4)(ii)(B) requires that a petition for an internationally recognized athlete or athletic team must include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport....

8 C.F.R. 214.2(p)(3) provides the definition of a contract as:

*Contract* means 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.

8 C.F.R. 214.2(p)(7)(i) requires, in pertinent part:

(A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

After careful review of the record, it is determined that the petitioner failed to overcome the grounds for denial of the petition.

First, an alien athlete having an internationally recognized reputation may be granted P-1 classification to perform at a single competition or event or for an athletic season or tour appropriate to the sport as an individual athlete or member of an athletic team. See 8 C.F.R. 214.2(p)(1). The petitioner in this case seeks to employ the beneficiary as an instructor or coach, not as an athlete competing in a specific event or events or member of an athletic team. P-1 classification is not available to aliens seeking employment as coaches or instructors at an academy or school devoted to the sport.

Second, despite the finding in the director's decision, the petitioner failed to submit a written contract as specified at 8 C.F.R. 214.2(p)(3) (definition of "contract").

Third, it is noted that the letter from the U.S. Modern Pentathlon Association attests to knowledge of the beneficiary's reputation and has no objection to the alien's employment in the United States. However, the advisory opinion is immaterial as the position for which the petitioner seeks classification is not qualifying.

The denial of this petition is without prejudice to the filing of a new petition for any employment-based visa for which the beneficiary may be eligible.

The burden of proof in visa petition proceedings 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.