

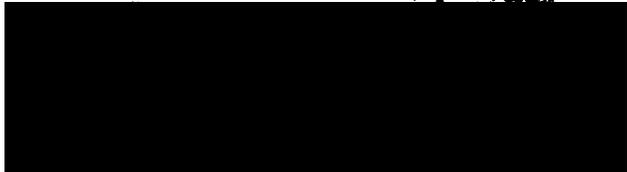


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File: WAC 03 238 50321 Office: CALIFORNIA SERVICE CENTER Date: **APR 13 2004**

IN RE: Petitioner:
Beneficiaries:



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:

SELF-REPRESENTED

INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a motorcycle dealership and race team, seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of one year. The petitioner seeks to employ the beneficiary temporarily in the United States as a motorcycle rider.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary is an internationally recognized athlete. The director further denied the petition because the petitioner failed to provide a consultation as required by the regulation at 8 C.F.R. § 214.2(p)(7)(i)(A).

On appeal, the petitioner states that he is appealing the decision because he now has evidence to establish that the beneficiary is an internationally recognized athlete.

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.

The regulation at 8 C.F.R. § 214.2(p)(1) states, in pertinent part:

(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 an internationally recognized athlete, individually or as part of a group or team

The regulation at 8 C.F.R. § 214.2(p)(3) states that:

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)(ii) sets forth the documentary requirements for P-1 athletes as:

(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) Evidentiary requirements for an internationally recognized athlete or athletic team. A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall 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, and
- (2) Documentation of at least two of the following:
 - (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;
 - (ii) Evidence of having participated in international competition with a national team;
 - (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
 - (iv) A written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;
 - (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;
 - (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
 - (vii) Evidence that the alien or team has received a significant honor or award in the sport.

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

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is an internationally recognized athlete.

A petitioner may establish that a beneficiary is an internationally recognized athlete by demonstrating that the beneficiary meets at least two of the seven of criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). In the instant case, the petitioner only submitted evidence in relation to criterion number four. The evidence consists of a statement from the International Federation of Motocross indicating that the beneficiary has been a regular contender in the FIM Motocross World Championships since 1997 and has ranked as high as the 11th position. The petitioner failed to establish that the beneficiary is an

internationally recognized athlete.

Finally, for the purpose of P-1 classification, the petitioner must show that the beneficiary is "internationally recognized," e.g. having a high level of achievement in the sport, recognition substantially above that ordinarily encountered, and recognition as a leading athlete in more than one country. On review, the director's finding that the evidence is insufficient to establish the requisite level of international recognition must be affirmed.

In a request for additional evidence, the director asked the petitioner to submit a consultation from a labor organization with expertise in the area of the alien's skill. 8 C.F.R. § 214.2(p)(7)(i)(A). The petitioner failed to submit a consultation. For this additional reason, the petition must be denied.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary is coming to the United States to perform services that require an internationally recognized athlete. According to the itinerary submitted by the petitioner, the beneficiary would be coming to the United States to participate in the 2004 AMA Supercross Series and the 2004 AMA Chevy Trucks Motocross Championships. The petitioner provided no evidence to establish that these competitions require internationally recognized athletes.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary is coming to the United States to participate in athletic competitions that have a distinguished reputation, as required by 8 C.F.R. § 214.2(p)(4)(ii)(A). The petitioner submitted no evidence to establish that the events listed on the itinerary have distinguished reputations.

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.