



U.S. Citizenship
and Immigration
Services

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FILE: WAC03 263 54081 Office: CALIFORNIA SERVICE CENTER Date: **ADD 0 8 2004**

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

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:

[Redacted]

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prevent clearly unwarranted
invasion of personal privacy**

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.

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invasion of personal privacy**

[Signature]
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 professional motorcycle racing team. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1 classification of the beneficiary as an essential support alien pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner seeks to employ the beneficiary temporarily as an athlete's public relations manager for a two-year period.

The director denied the petition, finding that the beneficiary did not qualify for classification as an essential support alien under the pertinent regulations. The director determined that the petitioner had not established that a public relations manager was an integral part of the principal athlete's performance, or that the beneficiary has the requisite prior experience with the principal athlete.

On appeal, counsel for the petitioner asserts that effective communications skills are an integral part of the principal athlete's performance and that the evidence on the record demonstrates the beneficiary's essentiality, critical skills, prior experience and non-replaceability.

The regulation at 8 C.F.R. § 214.2(p)(3), provides the following definition:

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, [or P-3] 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.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) states:

- (A) *General.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
- (B) *Evidentiary criteria for a P-1 essential support petition.* A petition for P-1 essential support personnel must be accompanied by:
 - (1) A consultation from a labor organization with expertise in the area of the alien's skill;
 - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
 - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The petitioner submitted a favorable consultation to CIS from the American Motorcyclist Association (AMA). Consultations are advisory and are not binding on Citizenship and Immigration Services (CIS). 8 C.F.R. § 214.2(p)(7)(i)(D).

The petitioner submitted a summary of the terms of the oral agreement between the beneficiary and the petitioner.

The petitioner provided CIS with a statement describing the beneficiary's prior essentiality, critical skills and experience with the principal alien. The statement says, in part:

[The beneficiary], a longtime confidant and adviser to Ernesto Fonseca [principal athlete] in Costa Rica, has critical skills in the area of athlete image presentation in Latin American markets that are essential to Mr. Fonseca's performance in the ultra-competitive AMA Supercross and Motocross Championships. The athletic performance of top riders encompasses not just physical training, but communications training, image management, sponsor relations, and image presentation in specific geographic market segments as well.

In today's competitive racing environment, "factory" motocross riders at the very top of their sport are chosen just as much for their wholesome image and their suitability as role models, as for their speed and physical ability. . . . All factory-level riders require the services of professionals to provide public image coaching, as well as coordination of their promotional activities with the intense physical and mental demands of their sport. The Public Relations Manager is especially essential to foreign riders, whose most loyal sponsors, sportswriters, and hometown fans are overseas.

[The beneficiary] has advised Ernesto Fonseca as his public relations coach since 1999 in their native Costa Rica and in the United States.

In review, the evidence is insufficient to establish that the beneficiary is essential to the performance of the principal athlete. The assertions of counsel and of the petitioner are not persuasive.

The petitioner failed to establish that the beneficiary has the requisite prior experience with the principal athlete. The petitioner's assertions are insufficient evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence on the record indicates that the beneficiary was the recipient of an approved H-3 nonimmigrant visa filed by Troy Lee Designs with validity dates from September 10, 2001 until September 10, 2003. The petitioner asserts that the beneficiary has been working for the principal athlete since 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.