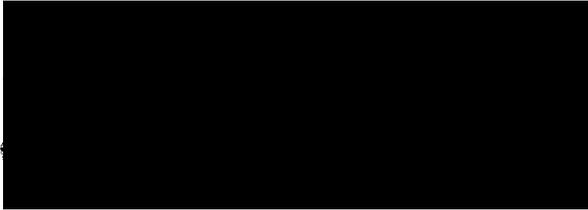




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D8

FILE: WAC 04 142 53572 Office: CALIFORNIA SERVICE CENTER Date: NOV 18 2008

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

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(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 California Service Center Director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for further action and consideration and for entry of a new decision.

The petitioner, Northern California Rugby Union, is a sports association. The beneficiary is a rugby competitor and coach. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as a player and assistant coach for a period of sixteen months at an annual salary of \$20,000.

The director denied the petition, in part, finding that the petitioner had failed to establish that the beneficiary is a person at the very top of his field. The director denied the petition, in part, finding that the petitioner failed to provide evidence required to accompany an O-1 petition, i.e., copies of contracts, an explanation of the nature of the events or activities, and a written advisory opinion. See 8 C.F.R. § 214.2(o)(2)(ii)(B), (C), and (D).

On appeal, the petitioner states that it did not receive the notice of intent to deny so it was unable to respond to it. The petitioner failed to submit any additional evidence on appeal.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 103.2(b)(8) provides, in pertinent part:

Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service [now known as the Citizenship and Immigration Services (CIS)] finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, [CIS] shall request the missing initial evidence . . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence.

In the instant case, there is no evidence of ineligibility and initial evidence is missing; therefore, the director should have issued a request for evidence rather than a notice of intent to deny. The director's decision shall be withdrawn and the matter will be remanded to the director to request additional evidence related to 8 C.F.R. §§ 214.2(o)(2)(ii) and 214.2(o)(3)(iii).

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn and the matter is remanded to the director to take action consistent and for the entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.