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U.S. Citizenship
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FILE:

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OFFICE: NEBRASKA SERVICE CENTER

Date: JUN 13 2005

IN RE:

Petitioner:
Beneficiary:



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:



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.

Maui Johnson

sn Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the nonimmigrant visa petition in a decision dated November 24, 2004. The petitioner timely appealed the director's decision to deny the petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a squash club. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking extension of the validity of the petition classifying 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 five years. The petitioner seeks to employ the beneficiary as a head squash professional.

The director denied the petition, finding the beneficiary would not be in the United States solely for the purpose of performing as an athlete with respect to a specific athletic competition.

On appeal, counsel for the petitioner

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 director determined and the AAO concurred that the beneficiary is an internationally recognized athlete. The issue to be addressed in this proceeding is whether the petitioner established that the beneficiary "seeks to enter the United States temporarily and *solely* for the purpose of performing as . . . *an athlete* with respect to a *specific athletic competition*." (Emphasis added).

The director noted that the petitioner indicated that the beneficiary would devote 65% of his time to playing, competing and training as an athlete, and 35% of his time to administrative and promotional matters. The director determined that the beneficiary would not be in the U.S. solely for the purpose of performing as an athlete, as he would allocate only 65% of his time to playing, competing and training as an athlete. The director further noted that the beneficiary was not seeking to enter the U.S. to perform with respect to a specific athletic competition.

On appeal, counsel for the petitioner asserts that the duties of the proffered position, head squash professional, are those of an athlete. It is noted that some of the beneficiary's job duties involve teaching, coaching, training and conditioning individuals and teams. This office has previously determined that P-1 classification is inappropriate for a coach, because the alien was not seeking to enter to the U.S. to perform as an athlete. The AAO concurs with the director's finding that the petitioner failed to establish that the beneficiary is coming to the U.S. solely for the purpose of performing as such an athlete.

The next issue to be addressed is whether the petitioner established that the beneficiary "seeks to enter the United States temporarily and *solely* for the purpose of performing as . . . an athlete with respect to a *specific athletic competition*." (Emphasis added).

Citing the regulation at 8 C.F.R. § 214.2(p)(3), defining "competition, event or performance," counsel asserts

that the event may be the duration of the alien's contract. Counsel's assertion is persuasive. Nonetheless, the petitioner has failed to overcome all of the director's objections to approving the petition, as discussed above.

Counsel for the petitioner asserts that since there have been no material changes in the beneficiary's duties, denial of the request for an extension of the validity of the visa petition is contrary to CIS policy described in William Yates' memorandum, dated April 23, 2004, which states extension request with no material changes should be approved. Counsel for the petitioner further noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.