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U.S. Citizenship
and Immigration
Services

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DA

FILE: EAC 03 181 54109 Office: VERMONT SERVICE CENTER Date: MAY 25 2005

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]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the nonimmigrant visa petition in a decision dated November 14, 2003. The petitioner 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 tennis club. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking an 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 two years. The petitioner seeks to employ the beneficiary temporarily in the United States as a rugby coach.

The director denied the petition, finding that the classification sought is inapplicable to coaches and that the consultation submitted was insufficient.

On appeal, counsel for the petitioner submits additional evidence.

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 first issue to be resolved is whether the petitioner satisfied the requirements of 8 C.F.R. § 214.2(p)(7)(i). The regulation at 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.

Initially, the petitioner submitted a consultation dated 1999 to Citizenship and Immigration Services (CIS) with the instant petition. Finding the 1999 consultation outdated, the director requested the petitioner to submit a more recent consultation in his request for additional evidence. In response to the request for additional evidence, the petitioner submitted a consultation dated September 14, 2003. In his decision, the director determined that the September 2003 letter was inadequate because it was a photocopy, very poorly worded, grammatically incorrect and suspect. On appeal, the petitioner submits a consultation dated December 9, 2003 written by [REDACTED] Director of Tennis, United States Tennis Association National Tennis Center. The petitioner overcame this ground of denial.

The other issue to be addressed in this proceeding is whether the beneficiary, as a coach, is eligible for P-1 nonimmigrant visa classification.

P-1 visas are available to persons who perform as an athlete, or a person who performs with or is an integral part of an entertainment group. Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(a)(15)(P). The petitioner seeks to employ the beneficiary as a coach rather than as an athlete or entertainer; hence, the petition for P-1 classification may not be approved.

In his decision, the director noted that the beneficiary could potentially qualify for a P-1S (essential support personnel) visa if he were coaching athletes of P-1 caliber. In the director's request for additional evidence, he asked the petitioner to submit evidence of the caliber of the students being coached by the beneficiary. In response, the petitioner indicated that the beneficiary had or was coaching [REDACTED] and [REDACTED] two junior level tennis players. The evidence on the record indicates that the beneficiary has been coaching top junior level tennis players. The evidence does not establish that the beneficiary has been and will be coaching P-1 athletes.

It is noted that CIS approved a petition that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same 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 the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Accordingly, the AAO affirms the director's decision denying the petition.

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

ORDER: The appeal is dismissed.