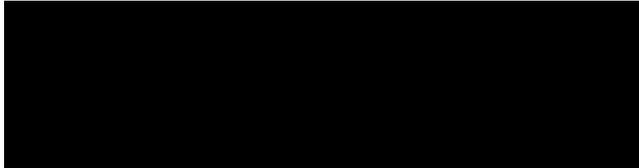




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



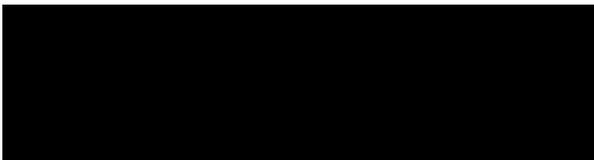
D9

FILE: EAC 04 238 53587 Office: VERMONT SERVICE CENTER Date: NOV 28 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:



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 Acting Director denied the nonimmigrant visa petition in a decision dated August 23, 2004. 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 professional tennis academy and health club. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, 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 14 months. The petitioner seeks to employ the beneficiary temporarily in the United States as a professional tennis player and coach.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is internationally recognized as an athlete or as a coach.

On appeal, counsel for the petitioner submits a brief and additional evidence, most of which had been previously submitted to Citizenship and Immigration Services (CIS).

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)(i) provides for P-1 classification of an alien:

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)(1)(ii)(A) provides for P-1 classification of an alien:

- (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete include:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed; and

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.

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)(i)(A) provides, in pertinent part, that:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

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 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.

The first issue to be addressed in this matter is whether the petitioner established that the beneficiary is an internationally recognized athlete as defined in the Act and regulations. The petitioner can establish that the beneficiary is internationally recognized by submitting evidence satisfying the documentary requirements listed at 8 C.F.R. § 214.2(p)(4)(ii)(B). Counsel for the petitioner asserts that the evidence submitted satisfies subparagraphs (ii), (iii) and (iv) of 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

As evidence of having participated in international competition with a national team, the petitioner submitted a letter dated July 19, 2004, written by [REDACTED] that states that the beneficiary played in a number of international events from 1995 to 1996 in the under 18 category in South Africa. The letter further states that the beneficiary represented “Northern Transvaal Schools as well as South Africa in the qualifying for the NNT World Junior Finals in Ghana and the Ivory Coast and at the finals in Japan in the years 1991 to 1992.

As additional evidence of having participated in international competition with a national team, the petitioner submitted a letter dated May 8, 1992, written by [REDACTED] Tournament Marketing Manager, Tennis South Africa, congratulating the beneficiary on his selection for the South African team at the “forthcoming ITF Youth World Cup in Durban.”

The director noted that the beneficiary played at a junior or youth level; therefore, he was not playing at an internationally recognized level. Counsel for the petitioner asserts that the regulation makes no distinction between junior and senior players. Nonetheless, the plain meaning of the term “internationally recognized” requiring “a high level of achievement,” indicates that participation at the junior or youth level is insufficient. The beneficiary does not satisfy the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(ii).

As evidence that the beneficiary participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition, the petitioner submitted a letter from [REDACTED] Director of Tennis, University of Alabama at Birmingham (UAB), stating that the beneficiary played tennis for the UAB team from 1997 to 2000 and was their assistant coach in 2001. This letter, alone, is insufficient evidence that the beneficiary participated to a significant extent for a U.S. college or university in intercollegiate competition.

Counsel for the petitioner stated that the beneficiary played in NCAA Division I Tennis tournaments for the University of Alabama. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence is insufficient to establish that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iii).

As evidence that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv), the petitioner submitted a letter of recommendation from [REDACTED], that states that the beneficiary is “a well respected competitor.” This letter falls short of stating the beneficiary is internationally recognized. The evidence is insufficient to establish that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iii).

On appeal, counsel for the petitioner asserts that the director overlooked the fact that the beneficiary entered the United States on a scholarship to play for the University of Alabama and that most players in the NCAA championships have international rankings and play in major tournaments. The petitioner did not establish that the beneficiary played in the National Collegiate Athletic Association (NCAA) championships. Counsel for the petitioner states that the beneficiary [REDACTED] citing a letter from [REDACTED]. It is not clear from [REDACTED] letter whether he is saying that the beneficiary ranked number two in men’s singles within his NCAA conference or at the University of Alabama.

After careful review of the record, the AAO affirms the director's decision denying the petition. The petitioner failed to establish that the beneficiary satisfies at least two of the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B).

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.