



U.S. Citizenship  
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FILE: WAC 05 076 51609 Office: CALIFORNIA SERVICE CENTER Date: MAR 08 2006

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:

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 Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an agent for an athlete, who seeks to classify 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), as an internationally recognized athlete, for a period of four years. The petitioner seeks to employ the beneficiary temporarily in the United States as an athlete to train and compete in "road races."

In the decision, the director denied the petition, finding that the petitioner failed to submit the required labor consultation.

On appeal, the petitioner submits a statement and 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 regulation at 8 C.F.R. § 214.2(p)(1) states, in pertinent part:

(i) *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)(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)(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 athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the 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.

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.

In his statement on appeal, the petitioner claims that he did not understand the eligibility requirements prior to the denial of the petition. The petitioner then states that because the requirements were "clarified" in the director's denial, he now understands the requirements. In support of the appeal, the petitioner submits a letter from Craig A. Masback, CEO of USA Track and Field (USATF).

Upon careful review of the petitioner's statements, his appellate submission and the evidence in the record, we find the petitioner has failed to overcome the grounds for denial of the petition and to establish eligibility for approval.

First, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.*

In this instance, the director specifically indicated in his request for evidence that a consultation was necessary. The director stated:

Provide a consultation from a labor organization with expertise in the area of the alien's or team's sport. The consultation must evaluate and/or describe the alien's or team's ability and achievements in the field of endeavor. The consultation should also comment on whether the alien or team is internationally recognized for achievements, and state whether the services the alien or team is coming to perform are appropriate for an internationally recognized athlete or team.

We emphasize that the director did not request some vague class of documentation, but rather a specific document, leaving no ambiguity as to what was required. The petitioner's claim on appeal that the denial "clarified" this issue for him is not persuasive in light of the specificity of the director's request for evidence.

Beyond the decision of the director, we find additional reasons for why the petition may not be approved. First, the petitioner has not established that the beneficiary is internationally recognized either individually or as part of a team. P-1 classification is available for aliens who are coming to the United States to perform services as internationally recognized athletes, individually *or* as part of a group or team. 8 C.F.R. § 214.2(p)(1)(i). In this instance, the Form I-129 indicates that the beneficiary is coming to the United States to train and compete as an individual, not as part of a team. In order for the petitioner to establish that the beneficiary is an internationally recognized athlete, the petitioner must demonstrate that the beneficiary meets at least two of the seven of criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). In the instant case, the petitioner only submitted evidence in relation to criterion number seven. Accordingly, the petitioner failed to establish that the beneficiary is an internationally recognized athlete, either individually or as part of a team.

Second, the petitioner has failed to establish that the beneficiary is 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. *See* 8 C.F.R. § 214.2(p)(4)(ii)(A). According to the Form I-129, the beneficiary is coming to the U.S. to "train and compete in a series of races here in the U.S." However, the petitioner does not identify the races in which the beneficiary plans to compete or provide any evidence to establish that the races the beneficiary will compete in have a distinguished reputation and require

the participation of athletes that have an international reputation.<sup>1</sup>

Finally, the petitioner failed to submit an itinerary as required by 8 C.F.R. § 214.2(p)(2)(ii)(C).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Although the petitioner has submitted evidence of races in which the beneficiary has previously participated, to include the Big Sur International Marathon, the Biltmore Estate 15K Classic, the Pomoco Group Running Crab Road Race, the Ogden 20K Run, and the Ukrop's Monument Avenue 10K, we note that there is no evidence that these races have a distinguished reputation or that they require internationally recognized athletes.