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FILE: WAC 05 231 52139 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:



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 in a decision dated November 8, 2005. 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 both the wife and an agent of the beneficiary. The beneficiary is a professional poker player. 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). The petitioner seeks to employ the beneficiary for an undetermined period of time.

The director denied the petition, finding that the individual filing the petition does not qualify as an appropriate P-1 petitioner because she is not an established agent. The director denied the petition, in part, finding that the petitioner failed to submit a copy or summary of the terms of an adequate contract under which the beneficiary would be employed and failed to submit a copy of an itinerary.

On appeal, counsel for the petitioner submitted a brief arguing that the director's decision was not in accordance with the appropriate regulations.

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, in part, 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 of performance. . . .

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires 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.

(D) A written consultation from a labor organization.

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 criteria and documentary requirements for P-1 athletes:

(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 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.

The director determined that the beneficiary is an internationally recognized athlete.

The first issue to be addressed in this proceeding is whether the petitioner established that she may file a Form I-129 petition on the beneficiary's behalf as an agent.

Citing the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E), the director determined that the petitioner failed to establish that she is an "established agent;" therefore, she could not file a petition on the beneficiary's behalf. This portion of the director's decision shall be withdrawn. The regulation at 8 C.F.R. § 214.2(p)(iv)(E) does not state that an agent must be "established" in order to file a Form I-129 petition.¹ The petitioner has overcome this objection to the director's approval of the petition.

The next issue to be addressed in this proceeding is whether the petitioner satisfied the requirements of 8 C.F.R. §§ 214.2(p)(2)(ii)(B) and (C).

In a request for additional evidence dated August 25, 2005, the director asked the petitioner to clarify the petitioner's employer-employee relationship with the beneficiary and to submit the following evidence in accordance with 8 C.F.R. § 214.2(p)(2)(iv)(E):

¹ The requirement for an "established U.S. agent" was included in a proposed rule 59 Fed. Reg. 41843, 41845 (August 15, 1994), but dropped from the final rule. In the supplement to the final rule, the Service explained that "[t]he final rule recognizes that the term 'agent' need not be limited to a person or entity who entered into a formal agency agreement with the employer. An 'agent' can be someone authorized to represent and act for another, to transact business for another, or manage another's affairs." 62 Fed. Reg. 18508, 18509 (April 16, 1997).

- If the petitioner is an agent acting as an employer, it must specify the wages and other terms and conditions of employment through a contractual agreement with the beneficiary and provide an itinerary of definite employment.
- If the petitioner is acting as a representative for multiple employers, the terms and conditions of the employment for each of those employers must be explained and supported with an itinerary of definite employment. Copies of contacts between the employers and the beneficiary would further substantiate the petitioner's claim of qualifying employment.

In response to the director's request for additional evidence, the petitioner submitted a memorandum of understanding signed by the petitioner and beneficiary.

Citing the definition of contract at 8 C.F.R. § 214.2(p)(3), the director determined that the memorandum of understanding was insufficient because it failed to specify the wages to be paid to the beneficiary. Instead, the memorandum indicated that the petitioner/agent could withhold 15 percent of funds received for her personal use. The AAO agrees with the director's determination that the memorandum of understanding is insufficient evidence of a contract given that it fails to state the essential terms under which the beneficiary would be employed. Accordingly, the petition may not be approved.

Beyond the director's decision, the petitioner failed to satisfy all requirements for P-1 classification because there is no itinerary. In his request for additional evidence, the director asked the petitioner to submit an itinerary. The petitioner failed to submit an itinerary in response to the director's request for additional evidence. 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). 8 C.F.R. § 214.2(p)(2)(ii)(C) requires the petitioner to submit an itinerary. For this additional reason, the petition may not be approved.

Further beyond the director's decision, the petitioner failed to establish that the beneficiary will compete at an internationally recognized level, as required by 8 C.F.R. § 214.2(p)(4)(ii)(A). For this additional reason, the petition may not be approved.

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. § 1362. Here, that burden has not been met.

ORDER: The appeal is dismissed.