

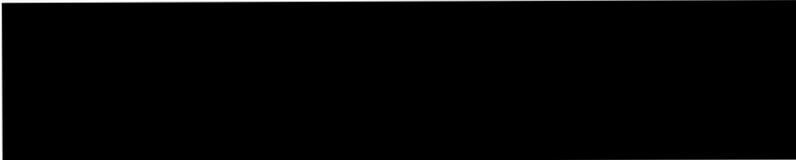
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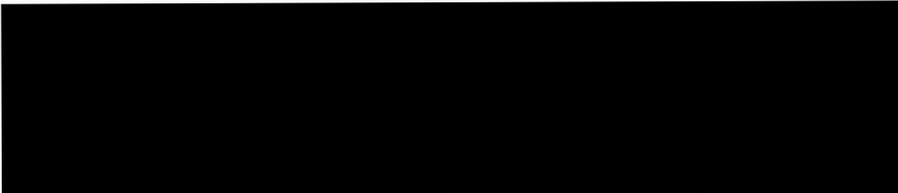


FILE: WAC 05 191 50035 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2006

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 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/manager for athletes, 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 three years. The petitioner seeks to employ the beneficiary temporarily in the United States as a professional boxer. The beneficiary is a 21-year old native and citizen of Mexico.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary is an internationally recognized athlete. The director found that an amateur athlete, such as the beneficiary, could not qualify for P-1 nonimmigrant classification. The director also denied the petition, in part, finding that the petitioner failed to submit the required consultation.

On appeal, counsel for the petitioner submits a brief 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.

After careful review of the record, it is determined that the petitioner failed to overcome the grounds for denial of the petition.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is an internationally recognized athlete. A petitioner may establish that a beneficiary is an internationally recognized athlete by showing that the alien meets at least two of the criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

The petitioner claims that the beneficiary satisfies the following criteria.¹

¹ The petitioner does not claim to meet or to submit evidence relating to the criteria not discussed in this decision.

Evidence of having participated in international competition with a national team.

The petitioner asserts the beneficiary satisfies criterion number two by virtue of his participation on the Mexican Olympic Team in the years 2000 – 2004. The petitioner submitted a translated excerpt from the Mexican Olympic Delegation handout and the beneficiary's Olympic Village badge from the 2004 Olympic summer games. The handout excerpt contains the beneficiary's biography and photographs. The beneficiary satisfies this criterion.

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.

For criterion number five, the petitioner submitted a letter dated March 29, 2005, written by [REDACTED], president of the Mexican Federation of Boxing, which states that the beneficiary participated at the international level of the Pan-American games in Santo Domingo in 2003 and in the Olympic summer games in Athens in 2004. The petitioner also submitted a letter dated July 26, 2005, written by [REDACTED] Chief Inspector, California State Athletic Commission, stating that the beneficiary was a member of the Mexican Olympic Boxing team and has participated in numerous international amateur events, including the 2004 Olympic Games in Athens and is an internationally recognized boxer.

The petitioner failed to establish that [REDACTED] is a member of the sports media or a recognized expert in boxing, so his letter will not be considered. The letter written by the president of the Mexican Federation of Boxing states that the beneficiary performed at an international level, but fails to assert that the beneficiary is an internationally recognized athlete. Not every athlete that plays at an international level is internationally recognized. The petitioner has not established that the beneficiary satisfies this criterion.

Evidence that the alien or team has received a significant honor or award in the sport.

The petitioner indicates that the beneficiary won the following honors or awards:

- Second place in the [REDACTED] Santo Domingo, 2001.
- First place in the [REDACTED] Oregon and Las Vegas, September 2001.
- Fifth place in the [REDACTED] Santiago de Cuba, September 2002.
- Third place in the qualifying round for the [REDACTED] La Paz, Baja California, April or August 2003.
- First place in the qualifying round [REDACTED] Baja California, March 2004.

The petitioner failed to submit primary corroborating evidence to establish that the beneficiary participated and placed in the above competitions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm.

1972)). The petitioner failed to establish that these are significant honors or awards. The beneficiary does not satisfy this criterion.

In review, the petitioner failed to establish that the beneficiary is an internationally recognized athlete. For the purpose of P-1 classification, the petitioner must show that the beneficiary is "internationally recognized," e.g., having a high level of achievement in the sport, recognition substantially above that ordinarily encountered, and recognition as a leading athlete in more than one country. The petitioner has not established that the beneficiary shares that level of recognition.

The next issue to be addressed is whether the petitioner satisfied the requirement that it submit a consultation. The regulation at 8 C.F.R. § 214.2(p)(2)(ii)(D) requires that petitions for P nonimmigrant aliens must be accompanied by a written consultation from a labor organization. The petitioner failed to submit a consultation with the Form I-130 petition. On July 6, 2005, the director asked the petitioner to submit, inter alia, a consultation from a labor organization with expertise in the area of the alien's sport. In response to the director's request for additional evidence, the petitioner submitted a letter dated July 26, 2005, from [REDACTED] Chief Inspector, California State Athletic Commission, asserting that professional boxing does not have a national labor organization or peer group which oversees the sport. Finding the petitioner's response inadequate, the director denied the petition in part, finding that the petitioner failed to submit the required consultation. On appeal, counsel for the petitioner asserts again that there is no national labor organization or peer group; hence it is unable to submit a consultation. Counsel also asserts that according to 8 C.F.R. § 214.2(p)(7)(vii), Citizenship and Immigration Services (CIS) shall list those organizations which have agreed to provide advisory opinions. Counsel states that CIS has not listed any labor organization agreeing to provide consultations for boxers in sections 212 and 214 of its Operating Instructions and that the absence of such a listing further supports the petitioner's position that an appropriate labor organization does not exist.

The regulation at 8 C.F.R. § 214.2(p)(7)(vii) states, in pertinent part:

The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. *The list will not be an exclusive or exhaustive list.* The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations. The Service will also list in its Operations Instructions those occupations or fields of endeavor where it has been determined by the Service that no appropriate labor organization exists.

Emphasis added.

The regulation explicitly states that the list in the Operations Instructions is not exclusive or exhaustive. Many petitioners obtain consultations from sport governing bodies. The International Boxing Association is the governing body for amateur boxing. The International Boxing Federation and World Boxing Association are two governing bodies for professional boxing. According to the regulation at 8 C.F.R. § 214.2(p)(7)(i)(F), in those cases where it is established by the petitioner that an appropriate labor organization does not exist the Service shall render a decision on the evidence of record. However, the petitioner failed to establish that an appropriate consulting entity does not exist. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought in all cases. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The letter provided from the California State Athletic Commission is insufficient. The petitioner failed to submit an adequate consultation.

Beyond the director's decision, the petitioner failed to establish that the beneficiary is coming to the United States to perform services that require internationally recognized athletes. According to the itinerary submitted by the petitioner, the beneficiary is coming to the United States to participate in eight boxing matches. The petitioner listed the dates of the fights, the opponents and venues. The petitioner provided no evidence to establish that these matches require internationally recognized athletes. For this additional reason, the petition may not be approved.

Further beyond the director's decision, the petitioner failed to establish that the beneficiary is coming to the United States to participate in athletic competitions that have a distinguished reputation, as required by 8 C.F.R. § 214.2(p)(4)(ii)(A). The petitioner submitted no evidence to establish that the events listed on the itinerary have distinguished reputations.

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.