

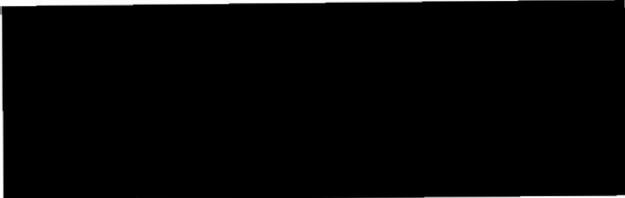
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FILE: WAC 07 028 51404 OFFICE: CALIFORNIA SERVICE CENTER Date: **AUG 18 2008**

IN RE: Petitioner:
Beneficiary:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition in a decision dated January 19, 2007. 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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is an equine facility. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking 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), for a period of four years as essential support for the petitioner's show riders and trainers. The petitioner seeks to employ the beneficiary as a horse groomer and trainer.

The director denied the petition, finding the beneficiary would not be in the United States solely for the purpose of performing as an internationally recognized athlete with respect to a specific athletic competition.

On appeal, counsel for the petitioner submits a brief addressing the director's denial and requests reconsideration of the beneficiary's eligibility.

Upon review, however, the record of proceeding reveals that the director's decision was in error. Specifically, despite the petitioner's request for consideration of the beneficiary as essential support personnel, the director's denial was based on the petitioner's failure to comply with evidentiary criteria required for P-1 classification of an alien as an internationally recognized athlete.

The proper standard for evaluation of this petition is set forth at 8 C.F.R. § 214.2(p)(3), which states:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Moreover, the regulation at 8 C.F.R. 214.2(p)(4)(iv)(B) provides that a P-1 petition for an essential support alien must be accompanied by:

- (1) A consultation from a labor organization with expertise in the area of the alien's skill;
- (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
- (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The petitioner's letter of support dated October 10, 2006 clearly requests consideration of the beneficiary's eligibility as an essential support alien. Despite this specific request, the director adjudicated the petition as one for an internationally recognized athlete, as evidenced by the request for evidence issued on November 15, 2006.

Consequently, the director's denial of the petition will be withdrawn and the petition will be remanded for a new decision. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility as an essential support alien. The director's decision will be certified to the AAO, if adverse to the petitioner, upon entry of a new decision.

ORDER: The director's decision of January 19, 2007, is withdrawn. The matter is remanded to the director for further action and consideration of the above discussion and the entry of a new decision that, if adverse to the petitioner, will be certified to the AAO upon completion.