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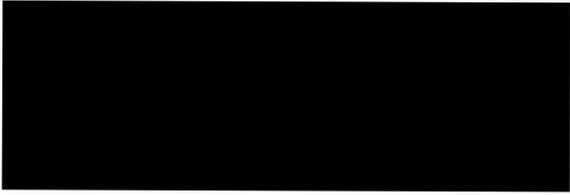
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: EAC 08 054 50732 Office: VERMONT SERVICE CENTER

Date: **AUG 18 2008**

IN RE: Petitioner:
Beneficiary:

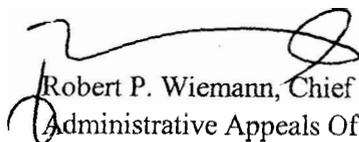


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

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, Vermont 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 a ladies professional development golf tour. It filed the instant nonimmigrant petition to classify the beneficiary as a P-1 athlete 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 five years. The petitioner seeks to have the beneficiary compete as a professional golfer at various tournaments throughout the United States.

The director determined that the petitioner failed to establish that the beneficiary met the regulatory criteria for classification as a P-1 athlete. Specifically, the director concluded that the petitioner had failed to establish that the beneficiary has achieved an internationally recognized reputation as an athlete. In denying the petition, the director observed that the petitioner had failed to submit evidence to address deficiencies that were expressly identified in a Request for Evidence (RFE) issued on December 28, 2007. The director further found that a letter submitted by the petitioner in lieu of a labor consultation was “self-serving” and did not meet the regulatory requirements.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) has granted numerous petitions for other golfers to compete on the petitioner’s tour based on evidence similar to what was submitted in support of the instant petition. Counsel asserts that the beneficiary has in fact competed in tournaments which conveyed international recognition, and “the fact that the Beneficiary competed in [the petitioner’s qualifying tournament] and qualified puts her in an elite international group.” Counsel further states that the petitioner “just learned that Beneficiary was of the mistaken belief that USCIS only would review her U.S. accomplishments,” and therefore she did not previously submit evidence of her international accomplishments. Counsel submits a brief and additional evidence in support of the appeal.

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)(4)(i)(A) states:

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)(3) further states, in pertinent part:

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 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.

As a preliminary matter, the AAO will withdraw the director's finding that the petitioner failed to provide a consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications, as required by 8 C.F.R. § 214.2(p)(7)(i)(A). The director accepted the petitioner's assertion that labor organization exists in the beneficiary's field, but requested that the petitioner submit "the alternative evidence that would be accepted" in the form of a peer group letter. The director's request for such "alternative evidence" in lieu of a consultation with a labor organization was inappropriate. The regulations governing P-1 athletes provide that "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." 8 C.F.R. § 214.2(p)(7)(i)(F). Accordingly, no "alternative evidence" was required from the petitioner.

The remaining 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 two out of the seven of 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 (iv), (v), (vi) and (vii) of 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv), the petitioner submitted a two-page letter dated November 28, 2007 from [REDACTED] Vice President of Corporate Operations for the FUTURES Tour, who provided background information regarding the tour and explained the FUTURES Tour showcases more than 300 players from 31 countries. With respect to the beneficiary's qualifications and international recognition, [REDACTED] stated the following:

[The beneficiary] is qualified to compete on the FUTURES Tour in 2008. The following is a summary of her career highlights.

2007

- [REDACTED] at Rocks Springs Ridge, Apopka, FL – 1st
- Junior Girls' Championship at [REDACTED]
[REDACTED], Winter Garden, FL – 21st
- Florida Junior Tour-Q Series at [REDACTED], Kissimmee, FL – 1st
- First American Title Junior Classic conducted by the [REDACTED]
[REDACTED] Tampa, FL – 15th
- [REDACTED] at [REDACTED], El Campeon –
4th

2006

- Howie-in-the-Hills, Fl – 4th

The director issued a request for evidence on December 28, 2007, in which she specifically stated that, based on the information provided, it appears the only place the beneficiary has competed in her sport is in Florida. The director cited to the regulatory definition of “internationally recognized” and noted that the submitted evidence did not establish the international reputation of the beneficiary. In response, counsel for the petitioner quoted portions of [REDACTED]’s letter and stated that the information provided is sufficient to meet the criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv). Counsel further stated that “in suggesting that competitor on a tour of this caliber has not achieved international acclaim, you are suggesting that a tour which has over 300 competitors from 31 countries is not of a sufficiently high caliber to illustrate that these players have achieved international acclaim.”

The director ultimately concluded in her decision that petitioner’s letter was “self-serving” and “does not identify how the beneficiary has achieved a level of success in the sport of golf.” The AAO does not agree that the letter from [REDACTED] is self-serving. However, the letter fails to meet the evidentiary criteria because it fails to “detail how the alien . . . is internationally recognized,” as required by 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv). [REDACTED] simply stated that the beneficiary is qualified to compete on the 2008 FUTURES Tour and listed some of the beneficiary’s accomplishments in U.S. junior tournaments over the previous year without explaining the significance or scope of the tournaments or the international recognition conveyed on the beneficiary as a result of her performance. For this reason, the letter falls short of detailing how or whether the beneficiary is in fact internationally recognized.

Furthermore, the letter was not accompanying by any other evidence that would establish the stature of the tournaments in which the beneficiary competed, nor is there any evidence documenting the beneficiary’s participation in the listed tournaments. 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)).

On appeal, the petitioner also submits: a letter dated February 26, 2008 signed by [REDACTED], Chief Executive Officer; a letter dated June 17, 2008 from [REDACTED] General Counsel for the Ladies Professional Golf Association (LPGA); and some documentary evidence related to the beneficiary’s accomplishments outside the United States. The newly submitted letters from the petitioner and the LPGA list the beneficiary’s accomplishments in junior events in her sport dating back to 2001.

With respect to the new evidence of the beneficiary’s international accomplishments, it is noted that the need for such evidence was indicated in the director’s RFE. In the RFE, the director noted that based on the information provided “it appears the only place the beneficiary has competed in her sport is in Florida. This evidence does not establish an international reputation of the beneficiary.” While counsel characterized the RFE as overly broad, the AAO finds no ambiguity in this statement. The petitioner had ample notice that USCIS required evidence of the beneficiary’s international accomplishments and did not submit such evidence in response to the RFE. Counsel’s assertion that the beneficiary was not aware of the requirement to submit evidence of international accomplishments is not persuasive, given that the RFE noted that such evidence was lacking, and given counsel’s claim that the petitioner has submitted dozens of P-1 petitions and is therefore aware of the evidentiary requirements. Where 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). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.*

On appeal, counsel emphasizes that “the fact that Beneficiary competed in [the FUTURES qualifying] tournament and qualified puts her in an elite international group and the Director simply did not understand this fact.” Counsel contends that “[t]his fact is *ipso facto* of international when it allows Beneficiary to join professionals from 31 countries on such an elite tour.”

The fact that the beneficiary recently qualified for the FUTURES Tour, in and of itself, does not establish that the beneficiary’s achievement in the sport of golf is “renowned, leading, or well-known in more than one country.” The petitioner has not detailed the requirements for participation in the four-round qualifying tournament for the FUTURES Tour, or provided evidence of the beneficiary’s performance in the qualifying tournament. Nor is there any evidence in the record to support a finding that the FUTURES Tour only accepts golfers who have previously achieved international recognition in the sport.¹

For the above reasons, the letter submitted by the FUTURES Tour does not meet the criterion set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v) the petitioner submitted letters from two FUTURES Tour Players, ██████████ and ██████████ and ██████████ identified themselves as professional golfers and experts in the game of golf, and each indicated that they are members of the LPGA Tour. ██████████ and ██████████ provided a list of the beneficiary’s accomplishments identical to that provided by ██████████, and each concluded: “As a result of her play in these tournaments and internationally, [the beneficiary] is an internationally recognized golfer whose play will add substantially to U.S. tour events.”

Neither of these letters meets the regulatory requirements set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v). The letters are written in general terms that fail to detail how the beneficiary is internationally recognized. Rather, both ██████████ and ██████████ summarily state that the beneficiary’s achievements in U.S. and international tournaments have resulted in international recognition, yet they fail to provide any information regarding specific international tournaments in which the beneficiary has participated. As discussed above, the list of tournament results provided in the letters was lacking explanation of the significance of the beneficiary’s accomplishments in specific tournaments, or how such results conveyed international recognition on the beneficiary.

¹ According to the 2008 *Qualifying Tournament Information for the Duramed Futures Tour*, which the petitioner submits on appeal, the tour accepted entry applications and fees from professionals and amateurs with a handicap of five or lower on a first come, first served basis, with no more than 312 entries accepted. The tournament results are published on the petitioner’s web site and publicly available at <http://www.duramedfuturestour.com>. Approximately 260 of the roughly 300 golfers who participated in the tournament qualified for the tour. The remaining participants exceeded the stroke limit set by the tour, withdrew, or were disqualified.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi), the petitioner submitted an excerpt from the “Girls’ ratings” from the *Golfweek/Titlest Performance Index*, which show that the beneficiary is ranked 277th out of 1807 girls. The listing shows that the beneficiary has a record of 46 wins and 85 losses overall, with 0 wins and 23 losses versus players ranked in the Top 100.

In the request for evidence issued on December 28, 2007, the director advised the petitioner as follows:

Although you have provided information of how the beneficiary is ranked in her sport, the evidence shows her ranking in girls’ ratings. Therefore, it cannot be determined that she has acquired international acclaim as a professional golfer.

In response, counsel argued that the director erroneously dismissed the beneficiary’s *Golfweek* ranking as insufficient because it is a “girls’ ranking.” Counsel stated that the *Golfweek* rankings are leading rankings for men and women amateurs and collegiate students, and, because the beneficiary has just now qualified for the professional tour, the only rankings available are those she achieved as an amateur. Counsel asserted that her ranking within the top 300 of 1807 indicates that “she was one of the top amateurs in the world before achieving professional tour status.” Counsel also argued that an extension of the director’s reasoning “would preclude first year professionals from obtaining visa to compete on a professional tour.”

The AAO notes that the regulations do not require the petitioner to establish that the beneficiary has played as a professional in her sport. Nonetheless, the plain meaning of the term “internationally recognized,” requiring “a high level of achievement,” indicates that participation in competitive sports at the junior or youth level will usually be insufficient, by itself, to establish the international recognition of an adult or professional competitor. In this case, however, we find it reasonable to take the beneficiary’s age into consideration when considering evidence of her ranking in the sport. When reviewing such evidence, a distinction can be made between a 17 year-old who has recently competed in junior tournaments and is currently ranked as a youth or junior player, and a 27 year-old player whose only achievements and rankings were achieved at the junior level. Evidence of a beneficiary's accomplishments as a junior or youth level athlete will carry greater weight when it reflects the contemporaneous accomplishments of an athlete. Therefore, the petitioner has submitted sufficient evidence to establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi).

The fourth and final criterion the petitioner seeks to meet is evidence that the beneficiary “has received a significant honor or award in the sport.” 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii). At the time of filing, counsel referred the director to the above-referenced letters from the petitioner, [REDACTED], and [REDACTED] as evidence of the beneficiary’s receipt of significant honors or awards.

In response to the RFE, counsel stated:

[The beneficiary] has submitted evidence that she has achieved significant honors or awards in the sport, including 1st place at the Callaway World Qualifier at Rocks Springs Ridge, Apopka, Florida and 1st place at the Florida Junior Tour-Q Series at Orange Lake Resort and CC, Kissimmee, Florida, both in 2007.

As noted above, the petitioner did not submit any additional documentary evidence in response to the RFE that would have established the beneficiary's awards at the Callaway World Qualifier or the Florida Junnior Tour-Q Series.

On appeal, counsel contends that the director dismissed the beneficiary's accomplishments, noting that two of the beneficiary's tournaments, the Calloway World Qualifier and the Junior Girls' Championship, were for national or global titles and "conveyed international recognition upon [the] Beneficiary." Counsel's assertions are unpersuasive for two reasons.

First, counsel offers no documentary evidence to corroborate his claim that the tournaments in question are major, national tournaments of a stature to "convey international recognition." 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). Moreover, the record is lacking in required documentary evidence of the beneficiary's participation in these tournaments. 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)).

Second, the petitioner was previously put on notice that the initial evidence was not sufficient to establish that the beneficiary has achieved international recognition in her sport. If the petitioner has evidence that the beneficiary's prior tournament results earned her such recognition, it should have submitted that documentary evidence in response to the RFE. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764.

Accordingly, the petitioner has not submitted evidence that the beneficiary has achieved a significant honor or award in her sport, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii).

In summary, the limited evidence submitted by the petitioner fails to meet at least two of the criteria listed in the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). Therefore, the petitioner failed to establish that the beneficiary has achieved international recognition in the sport of golf, and the appeal will be dismissed.

The AAO acknowledges that the petitioner has been granted a number of P-1 petition approvals for athletes participating on the FUTURES Tour. In this regard, counsel argues:

The undersigned counsel has personally filed in excess of 50 P-1 visa petitions for professional golfers to compete on the FUTURES Tour and none have been denied on the basis that a person on this professional tour lacks international recognition. In suggesting that a competitor on a tour of this caliber has not achieved international acclaim, you are suggesting that a tour which has over 300 competitors from 31 countries is not of a

sufficiently high caliber to illustrate that these players have international acclaim.

Contrary to counsel's arguments, the denial of this petition does not equate to a broad finding that the players who have been granted P-1 status to join the petitioner's tour lack the requisite international acclaim. Again, it is emphasized that the fact that the beneficiary qualified for the tour does not imbue her with the required "international recognition" for this classification. To follow counsel's suggestion to its logical conclusion, any golfer who performed well enough in the petitioner's qualifying tournament to compete in the FUTURES Tour would be eligible for a P-1 visa. However, the beneficiary's "international recognition" must be established through the submission of documentary evidence set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner's efforts to meet these documentary requirements prior to the adjudication of the petition were limited at best, and the appeal is being dismissed on evidentiary grounds, not because the AAO believes that participants on the FUTURES Tour generally lack the international recognition required for this visa classification.

On appeal, counsel submits copies of 19 Form I-797 Approval Notices issued to beneficiary's sponsored by the petitioner as well as copies of evidence submitted with previous petitions. Counsel notes that the evidence submitted in support of the instant petition is the "standard evidence" submitted by the petitioner, and the denial of this case therefore appears to be "an anomaly and out of touch with long time precedent of the Service."

It is worth emphasizing that that each petition filing is a separate proceeding with a separate record and separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). 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). If a director requests material evidence that was neither submitted by nor requested from the petitioner in a similar prior proceeding, the petitioner is, nevertheless, obligated to submit the requested evidence. The director's request for additional evidence in this matter was reasonable for the reasons discussed above, and the petitioner failed to submit any additional evidence of the beneficiary's eligibility in response.

Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Furthermore, based on a review of the evidence submitted by the petitioner with prior petitions, it appears that many of the beneficiaries were able to establish at the time of filing that they had significant international achievements in the sport, had previously competed and placed in professional events in the United States, had participated significantly in the sport in the collegiate level, had competed on national or World Cup teams in their home countries, or had other qualifications that more clearly established their eligibility as internationally recognized athletes when compared to the instant beneficiary. If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely

because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in denying the instant petition, notwithstanding any previous approvals granted to other beneficiaries sponsored by the petitioning organization.

In visa petition proceedings, the burden of proof 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.