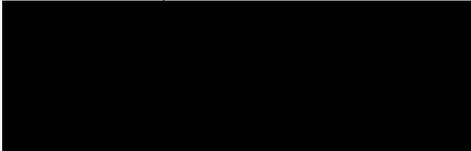




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FILE: WAC 05 144 51666 Office: CALIFORNIA SERVICE CENTER

Date: **MAR 01 2006**

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:

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.

Mari Jolusa

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 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 five years to employ her as a senior parachute rigger/skydiver/coach/translator.

In a June 8, 2005 decision, the director denied the petition, finding that the that the evidence was insufficient to demonstrate that the beneficiary is an internationally recognized athlete because the petitioner failed to establish that the beneficiary had a contract with a major sports league team or equivalent as required by the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(1), and that the beneficiary met the documentary requirements for P-1 athletes set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

The director also denied the petition, in part, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. This portion of the director's decision shall be withdrawn. The evidence in record establishes that the beneficiary is qualified and licensed as a senior parachutist rigger.

On appeal, the petitioner submits additional evidence and seeks to amend the petition to rename the proffered position "professional skydiver;" however, there is no regulatory or statutory authority to permit material amendments to a petition post-adjudication. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO will consider the evidence within the context of the position that was originally requested and considered by the service center director.

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, in pertinent part, 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 criteria and 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 has 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. Initially, the petitioner failed to submit any evidence in relation to this requirement. On appeal, the petitioner submits a letter from [REDACTED] and [REDACTED] of [REDACTED] a professional skydiving team, that states that they have offered the beneficiary a position to join their freefly skydiving team. The petitioner submitted an article on appeal that indicates that [REDACTED] is a national champion freefly team. Nonetheless, the evidence is insufficient to establish that [REDACTED] is a major United States sports league or team. The petitioner failed to establish that the beneficiary has a tendered contract with a major United States sports league or team.

The second 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 demonstrating 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), *supra*. The petitioner did not specify which criteria it believes the beneficiary has met; however, it submitted evidence relating to the criteria discussed herein. The AAO has not discussed the other criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2) because the evidence within the record does not relate to those criteria.

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

For criterion (ii), the petitioner submitted a letter written by the [REDACTED] of the [REDACTED] that states that the beneficiary has participated and competed in a number of international events at the highest levels of the sport. The letter fails to state in which competitions, where and when the beneficiary competed. The petitioner submitted a certificate awarded to the beneficiary for her participation in a 16-way vertical drop in June 2005. The petitioner submitted a certificate awarded to the beneficiary for her participation in the [REDACTED] on June 25, 2005 in Chicago, Illinois. On appeal, the petitioner submitted an article published in the June 2005 edition of *Parachutist* indicating that the beneficiary participated in a record 53-way formation. The 16-way, 18-way and 53-way formations all occurred after the filing date of this petition; hence, it cannot be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

(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.

The petitioner submitted a letter written by the [REDACTED] that states that the beneficiary has become "one of the top women freeflyer[s] in the United States." The letter fails to state that the beneficiary is internationally recognized. The beneficiary does not meet this requirement.

(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.

The petitioner submitted a written statement from [REDACTED] president of [REDACTED] established that he is a recognized expert in the sport. He stated that the beneficiary is a "world-class parachutist who shares a world record for largest all-woman freefall formation . . . [who has] become one of parachuting's woman stars, highly respected, appreciated and sought out for advice and perspective from jumpers all over the country." Although the letter is highly favorable to the beneficiary, it fails to establish that the beneficiary is *internationally recognized*. Accordingly, the beneficiary does not meet this requirement.

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

The petitioner submitted evidence that the beneficiary participated in three record setting formation jumps. The petitioner failed to establish that these are significant honors or awards in the sport. The petitioner failed to establish that the beneficiary meets this requirement.

Beyond the director's decision, the petitioner failed to submit a consultation as required by the regulations. 8 C.F.R. § 214.2(p)(7)(i)(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. Denial of this petition is without prejudice to the filing of another employment-based non-immigrant visa petition.

ORDER: The appeal is dismissed.