U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

D9

[redacted]

FILE: WAC 06 800 08950 Office: CALIFORNIA SERVICE CENTER Date: OCT 02 2008

IN RE: Petitioner: [redacted]
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:

[redacted]

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a polo horse farm which seeks 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 horse trainer.

The director determined that the petitioner failed to establish that the beneficiary met the regulatory criteria for P-1 classification as an internationally recognized athlete. Specifically, the director found that the petitioner had failed to demonstrate that the beneficiary would be coming to the United States to perform at an internationally recognized level of performance. Additionally, the director found that the petitioner had failed to submit the required consultation.

On appeal, counsel submits a brief outlining the beneficiary's eligibility in this matter.

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.

Moreover, the regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*) provides that a P-1 classification applies to an alien who is coming temporarily to the United States to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

The first question before the AAO is whether the beneficiary, as a horse trainer, can properly be considered an athlete under the above provisions. On the O and P Classification Supplement to Form I-129, the petitioner described the beneficiary's proposed duties in the United States as follows:

> To direct and to train polo ponies, to groom them, to take care of them, to condition them and to be responsible for the general upkeep of [the petitioner's] stables and polo facilities.

In this matter, it appears that the director adjudicated the petition under the P-1 requirements, and provided an abbreviated analysis pertaining to the beneficiary's international recognition. Upon review of the petition and the accompanying evidence, particularly the above-mentioned overview of the beneficiary's proposed duties, the AAO finds that the petitioner incorrectly requested and the director

erroneously adjudicated the petition under the P-1 classification for athletes.[1] While the AAO concurs with the director's ultimate conclusion in this matter, it finds that the analysis of whether the beneficiary was an internationally recognized horse trainer was erroneous. The P-1 classification is not available to horse trainers. The regulation at 8 C.F.R. §214.2(p)(1)(ii)(A)(*1*) applies to an *athlete* who is coming to perform "at a specific athletic competition . . . at an internationally recognized level of performance."

The P-1 nonimmigrant classification is limited to internationally recognized athletes who are coming to perform solely as competitive athletes. The AAO notes that in other non-immigrant categories, CIS consistently makes a distinction between athletes and trainers or coaches. *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002)(noting that legacy INS had explicitly stated that the "area" of athletes should not be considered as a whole to include every occupation involving athletes). The P nonimmigrant category itself distinguishes between athletes and coaches, trainers and instructors by providing two different classifications: P-1 for athletes and P-1S for essential support personnel.

In lieu of P-1 classification as an internationally recognized athlete, the appropriate classification for the beneficiary appears to be that of a P-1S essential support alien. The regulation at 8 C.F.R. § 214.2(p)(4)(iv) provides for the classification of an essential support alien who is an integral part of the performance of a P-1 athlete or athletic team. In this matter, however, the petitioner did not identify a P-1 athlete or athletic team to which the beneficiary would render his support services. Moreover, the beneficiary's primary duties essentially are to take care of the grooming and conditioning of the petitioner's ponies and its stables as opposed to rendering support services to an internationally recognized P-1 athlete or athletic team.

While P-1 classification is available to horse trainers who qualify as essential support aliens, the petitioner does not assert, nor does the record demonstrate, that the beneficiary would be coming to the United States as an essential support worker accompanying a P-1 athlete or athletes. The petitioner did not seek to classify the beneficiary as an essential support alien. Since the description of duties clearly indicates that the beneficiary will not be coming to the United States to perform as an internationally recognized athlete, the petition may not be approved.

The burden of proof in visa petition proceedings 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.

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[1] The director's error is harmless because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).