U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D9

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2009
WAC 09 159 52727

IN RE: Petitioner:
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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify 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. The petitioner, which is self-described as a horse show barn, seeks to employ the beneficiary temporarily in the United States as a P-1 athlete to serve as a "Professional Athlete, Rider."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary falls under any of the classes of athletes, performers and coaches admissible under section 101(a)(15)(P)(i) of the Act. The director determined that the beneficiary does not qualify as a "professional athlete" as defined at section 204(i)(2) of the Act. The director further found that the petitioner failed to establish that the beneficiary meets at least two of the six evidentiary criteria for internationally recognized athletes or athletic teams pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*).

On appeal, counsel for the petitioner provides the following statement on Form I-290B, Notice of Appeal or Motion:

> The USCIS decision is in error. The 2006 COMPETE Act and all supporting documentation were not properly reviewed and considered in making the decisions in this case. A brief with all supporting documentation will be submitted to the AAO.

Counsel indicated that she would submit the brief and supporting documentation directly to the AAO within 30 days. Counsel filed the appeal on August 21, 2009. As of this date, more than three months have passed and counsel has not submitted a brief to the AAO. Accordingly, the record will be considered complete.

I. The Law

The instant petition was filed on May 13, 2009, subsequent to the passage of Public Law 109-463, "Creating [redacted]rough Legal Entry Act of 2006" (COMPETE Act of 2006), which amended Section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. The COMPETE Act, signed into law on December 22, 2006, expanded the P-1 nonimmigrant visa classification to include certain athletes who were formerly admitted to the United States as H-2B nonimmigrants.

Under the current statute, as amended by the COMPETE Act, the P-1 nonimmigrant classification includes: (1) athletes who perform at an internationally recognized level of performance, individually or as part of a team; (2) professional athletes as defined in section 204(i)(2) of the Act; (3) athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and (4) professional and amateur athletes who perform in theatrical ice skating productions.

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)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) 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;

(II) is a professional athlete, as defined in section 204(i)(2);

(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if

(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;

(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the [redacted] and

(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or

(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . .[.]

In relevant part, a "professional athlete," as defined at section 204(i)(2) of the Act, 8 U.S.C. § 1154(i)(2), is an individual who is employed as an athlete by:

(A) A team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage.

The regulation at 8 C.F.R. § 214.2(p)(3) defines "team" as "two or more persons organized to perform together as a competitive unit in a competitive event."

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien must seek 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.

II. The Issues on Appeal

Here, the petitioner's primary claim is that the beneficiary qualifies as a "professional athlete" as defined in section 204(i)(2) of the Act, and that the petitioner therefore does not need to establish that the beneficiary is an internationally recognized athlete. Nevertheless, the petitioner also claims in the alternative that the beneficiary meets the more stringent requirements pertaining to athletes who perform at an internationally recognized level of performance.

A. "Professional Athlete"

The first issue to be addressed is whether the petitioner has established that the beneficiary is a "professional athlete" pursuant to section 214(c)(4)(A)(i)(II) of the Act. As noted above, a professional athlete for purposes of this classification, is an individual who is employed by a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage. *See* section 204(i)(2)(A) of the Act.

In denying the petition, the director observed that the petitioner provided no evidence to establish that the beneficiary will be employed by a sports team that is a member of an association of 6 or more professional teams. Referring to the regulatory definition of "team" at 8 C.F.R. § 214.2(p)(3), the director found that "equestrian riding and jumping is an individual competition and that the individuals do not perform together as a competitive unit."

Upon review, the AAO concurs with the director's determination. The petitioner has not established that the beneficiary qualifies as a "professional athlete" as that term is defined in the statute.

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that it is doing business as a "horse show barn," rather than as a professional athletic team. In a letter dated May 12, 2009, counsel for the petitioner stated that the petitioner is a "team" that is "internationally recognized as a leading competitor on

the Counsel asserted that, based on these facts, the beneficiary is a "professional athlete" as defined in the Act.

In a letter dated July 9, 2009, submitted in response to the director's request for additional evidence, counsel stated:

> [The petitioner's] Team and the beneficiary are members of the United States Equestrian Federation (USEF), the body that governs and regulates the Sport and its Competitions. . . .
>
> The USEF currently has 71,061 members that have millions of dollars in annual revenues, well in excess of $10,000,000.00. In addition, annual revenue for prizes and award for competition is well in excess of $10,000,000.00. . . . [redacted]s made up of hundreds of teams in the United Sates. The [redacted] are in the following 8 of [*sic*] sports teams, all that is required under the 2006 Compete Act is 6. The teams are as follows: Dressage, [redacted].

In support of the petition, the petitioner has submitted copies of United States [redacted] membership cards for the petitioner's owner, [redacted]he beneficiary, and five other individual stated to be members of the petitioner's team. The petitioner also submitted competition results for [redacted]and other individuals for whom it provided USEF cards, all of whom appear to have ridden horses owned by Ms. Blake, as well as USEF horse reports for horses owned by [redacted]The name of the petitioning company or "team" does not appear on any of these documents.

The petitioner has also submitted extensive information regarding [redacted] including its mission statement and 2009 Rule Book. The evidence submitted demonstrates that [redacted]is the national governing body for equestrian sport in the United States, and that [redacted]does govern the conduct of its members and regulate contests and exhibitions in the sport. However, the petitioner did not submit evidence that the equestrian sport is comprised of "6 or more professional sports teams" or that the petitioner is a professional sports team. Based on the evidence submitted, it is evident that [redacted]issues memberships to individuals, not to teams, and that competition occurs on an individual level.

The AAO acknowledges the petitioner's claim that its team "has been internationally recognized in equine sports in the United States and abroad for many years," but notes there is no corroborating evidence in the record to support the claim that the petitioner has been recognized in any capacity as a "team" competing in the equestrian sport. Again, the regulation at 8 C.F.R. 214.2(p)(3) defines "team" as "two or more persons organized to perform together as a competitive unit in a competitive event." The AAO anticipates that evidence of a "sports team" would include documentation of the team's organization, performance, and results as a competitive unit in actual team events. The results of individual riders competing with horses owned by [redacted] are noted, but such results are not evidence that the petitioner is competing as a professional sports team in a league or association comprised of professional sports teams.

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)). 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).

The AAO can find no basis for considering the petitioning horse barn a "team" when there is no evidence that it participates in a team sport or that it is recognized in the industry as a professional sports team. Accordingly, the petitioner has not established that the beneficiary will be employed by the petitioner as a "professional athlete" as defined in section 204(i)(2) of the Act.

B. "Internationally Recognized Level of Performance"

The remaining issue in this matter is whether the petitioner has established that the beneficiary is an alien who performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(II) of the Act. To demonstrate that the beneficiary is an internationally recognized athlete, the petitioner must satisfy at least two of the evidentiary criteria provided at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*).

As a preliminary matter, however, the AAO notes that there is evidence in the record suggesting that the beneficiary is not even a competitive athlete, much less an internationally-recognized athlete whose achievement is renowned, leading, or well-known in more than one country. According to the beneficiary's resume, which has been provided for the record, the beneficiary worked as a horse show groom in Mexico from 1999 until 2002. The beneficiary indicates that he has been employed by the petitioner in California since 2002 as a "[redacted]" He describes his rider responsibilities as the following:

> Attend shows with the team and owners, exercise under the direction of trainers and owners, maintain equipment, receive instructions from trainers and owners, supervise and direct the grooms' work, discuss with the veterinarian all aspect of the horses' health in order to attend to the horses' needs at the farm and at horse who, warm up and cool down horses at the horse show, ride the horses to the show ring and warm-up the horses for competition.

The beneficiary does not indicate that he is a competitive equestrian rider. Rather, his responsibilities appear to be limited to preparing the horses for competitive riders. The beneficiary provides a list of 36 horse shows he has "attended" in California since 2002, but he does not provide any competition results with this list. Such evidence further suggests that the beneficiary merely attended the events as part of the horse owners' support staff and did not compete in such events. Finally, the petitioner has not provided evidence of any competition results for the beneficiary.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-

92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

In addition, USCIS records show that, at the time the instant P-1 petition was filed, the petitioner was also pursuing an appeal for an H-2B classification petition filed on behalf of the beneficiary for the position of horse show groom.[1]

Overall, these circumstances raise questions regarding the credibility of the petitioner's assertions that the beneficiary is a competitive athlete who would be coming to the United States "solely for the purpose of performing as such an athlete with respect to a specific athletic competition." Section 214(c)(4)(A)(ii)(I) of the Act.

Nevertheless, 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)(*2*). The petitioner does not claim that the beneficiary meets the criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*iii*) or (*vii*) and therefore the AAO will not address these criteria.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*i*), the petitioner must submit evidence that the beneficiary has participated to a significant extent in a prior season with a major United States sports league. Counsel for the petitioner asserted in response to the director's request for evidence that the beneficiary "has participated in several internationally recognized horse shows with [the petitioner's] team, 'both internationally recognized and USEF members.'" As noted above, the record is devoid of any evidence of the beneficiary's results or participation in the equestrian sport as a competitive athlete. The list of "Horse Shows Attended" appended to the beneficiary's resume is the only evidence submitted to establish that he has participated in the sport. The list of 36 events attended over a period of six to seven years does not provide sufficient evidence of the beneficiary's participation to a significant extent in a prior season of a major United States sports league. Again, 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. at 165. The fact that the beneficiary is currently a USEF member is insufficient to establish that he meets this criterion.

Referring to this criterion, counsel also submitted a letter dated July 2, 2009 from [redacted] who states that he is "aware that [the beneficiary] has been an integral part of the industry professional Athlete-Rider with a distinguished international reputation both in Mexico and the United States for some time, and is clearly internationally recognized in Mexico and the United States." While [redacted] credentials in the field of show jumping are noted, his letter is too vague to serve as evidence that the beneficiary has participated to a significant extent in a prior season with a major United States sports league. The petitioner has not established that the beneficiary meets the first criterion.

To meet the second criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*ii*), the petitioner must submit evidence that the beneficiary has participated in international competition with a national team. The petitioner relies on the same evidence to meet this criterion as it did to meet the first criterion. Contrary to counsel's statements, the record is

[1] *See* WAC 08 019 51745.

devoid of any independent documentary evidence that the beneficiary has participated in any equestrian competition in the United States or Mexico. Even if the AAO were to accept the beneficiary's apparently self-prepared list of "Horse Shows Attended" as evidence of his participation in equestrian competitions, the record contains no evidence that the shows he attended were international competitions. Finally, the petitioner has not explained how it could be considered a "national team" that has represented the United States in an international competition.

While the petitioner also relies on [redacted] letter to meet this criterion, the AAO notes that he does not state in his letter dated July 2, 2009 that he has knowledge that the beneficiary has competed in international competition with a national team. The petitioner has not established that the beneficiary meets this criterion.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*iv*), the petitioner must submit a written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized. In this regard, the petitioner submitted a letter dated November 6, 2008 from [redacted] states that she has been provided with a copy of the beneficiary's resume and that she "has no objection to the granting of the petition."

The director acknowledged the letter in the request for evidence issued on May 26, 2009, but advised that the letter does not meet the criterion because [redacted] did not detail how the alien is internationally recognized. In response to the RFE, counsel for the petitioner stated that "All that is required is a 'NO objection' letter." The director found that "a statement that no objection is raised is not the same as a statement detailing how the beneficiary is internationally recognized." The AAO agrees. Ms. Ike's letter stating that she has no objection is sufficient to meet the consultation requirement pursuant to 8 C.F.R. 214.2(p)(2)(ii)(D), but it does not meet the criterion 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 must submit 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. To satisfy this criterion, the petitioner submitted letters from five individuals, apart from the letter from [redacted], a professional horse show rider states that he is acquainted with the beneficiary and that the beneficiary "has exemplified that he is a rider of consummate skill." Everardo Hegewisch, also a professional show jumper, in a letter dated September 12, 2008 stated:

> My vast experience in competitions on the Horse Show circuit has enabled me to become acquainted and work with Athlete-Rider, [the beneficiary] who has spent many years under various world-renowned riders. Many horses that he has worked with and maintained have won many international accolades. [The beneficiary] is an excellent equine athlete. His experience participating in top international competitions has made him very sought out by [redacted]

[redacted] member or former member of the U.S. Equestrian team, states that she has come to know the beneficiary through her national and international experience. She states:

> [The beneficiary] is excellent with top show horses and has vast experience training prime

> horses for competitions. Through his experience, [the beneficiary] developed professional skills essential to the success of the horses in the show ring.

[redacted] states that the beneficiary "is aware of the rigors of the sport and is able to handle each horse with extraordinary skill," and is "an outstanding rider." Finally, [redacted] an international show jumping athlete, states that she knows the beneficiary and has seen him ride horses "of the highest caliber, as a professional Athlete-Rider." The petitioner also submitted extensive material regarding the individual providing letters, including their rankings, competition results, information regarding their farms, and articles about these individuals.

Upon review, none of the persons providing testimonials detail the beneficiary's accomplishments in the sport or how he is internationally recognized. The letters are written in vague language and do not establish how the beneficiary's achievements are renowned, leading, or well-known in more than one country. Furthermore, [redacted] first letter and [redacted] letter suggest that the beneficiary's expertise is as a trainer rather than as a competitive athlete. The petitioner has not established that the beneficiary meets this criterion.

Finally, the petitioner claims that the beneficiary meets the sixth criterion, which requires the petitioner to submit evidence that the individual or team is ranked, if the sport has an international ranking. 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vi*). Although the petitioner claims that the beneficiary meets this criterion, counsel referred to "documentation showing that the beneficiary has competed in several internationally recognized Horse Shows with [the petitioner's] team, and once again referred to [redacted] July 2009 letter to meet this evidentiary criterion. As discussed above, the record does not in fact contain any probative evidence of the beneficiary's competition in internationally recognized horse shows, even if such evidence could be accepted as evidence of the beneficiary's international ranking. Similarly, [redacted] does not mention the beneficiary's ranking in the sport. Again, the record does not contain any independent evidence that the beneficiary has ever ridden competitive in any equestrian competition, much less contain evidence that he is ranked among competitors in the sport. The petitioner has not established that the beneficiary meets this criterion.

III. Conclusion

In summary, as discussed above, the petitioner has also failed to establish that the beneficiary is a professional athlete as described at section 214.2(c)(4)A)(i)(II) of the Act. Furthermore, the 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 equestrian sport. Accordingly, the appeal will be dismissed.

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.