U.S. Department of Homeland Security
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 06 122 52917 Office: TEXAS SERVICE CENTER Date: FEB 09 2009

IN RE: Petitioner:
Beneficiary: [redacted]

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

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P). The petitioner is self-described as a provider of support personnel for the horse racing industry. It seeks to temporarily employ the beneficiary as a jockey assistant for a period of approximately four years and five months.

The director denied the petition on August 25, 2006, concluding that the beneficiary does not qualify as an essential support alien under the regulations because the petitioner: (1) did not establish that the beneficiary possesses critical skills that are an essential part of the principal athlete's performance; or (2) submit evidence to establish the beneficiary's prior relationship with the principal athlete.

Counsel for the petitioner filed the instant appeal on September 26, 2006. Counsel provided the following statement on Form I-290B, Notice of Appeal to the AAO:

1. The duties of an assistant trainer involve assistance and direct contact with jockeys.
2. Department failed to understand nature and essentiality of the duties of a thoroughbred jockey assistant.

Counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. Approximately four months later, on January 22, 2007, the petitioner submitted a brief and additional evidence to the AAO. In a letter dated January 19, 2007, counsel for the petitioner submits a copy of Public Law 109-463, Creating Opportunities for Minor League Professionals, Entertainers, and Teams through 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.[1]

Counsel asserts that, in view of the COMPETE Act, "the Beneficiary clearly qualifies for P-1 status in view of her attached jockey's license . . . issued by the Emirates Racing Association (ERA)." Counsel asserts that the ERA is "a bona fide national racing authority" and that horseracing activities conducted in the United Arab Emirates have "importance internationally." Counsel asserts that the beneficiary complies with the newly established criteria for P-1 visa classification in that she is "an individual who performs individually as an athlete at an internationally recognized level of performance."

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[1] The COMPETE Act, passed by the United States Senate on December 6, 2006, expands 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, the P-1 nonimmigrant classification may include athletes who perform at an internationally recognized level of performance, individually or as part of a team; professional athletes as defined in section 204(i)(2) of the Act; athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and professional and amateur athletes who perform in theatrical ice skating productions.

The regulation at 8 C.F.R. § 214.2(p)(3), provides, in pertinent part:

> *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.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that beneficiary is qualified to perform the services and the services cannot be readily performed by a United States worker.

The director denied the petition based on the petitioner's failure to submit sufficient evidence to establish the beneficiary's prior essentiality, critical skills and experience with the principal P-1 athlete, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(*2*). The only evidence in the record in this regard was a letter from the principal P-1 alien, [redacted] who stated the beneficiary was an assistant trainer working for [redacted] at Churchill Downs racetrack in Louisville, Kentucky. [redacted] stated that the beneficiary assisted her with the horses she rode at Churchill Downs "and other tracks," but did not provide information regarding the dates of her working relationship with the beneficiary. The director noted that, based on the letter, it appears that the beneficiary assisted the trainer as opposed to only assisting the principal alien.

Furthermore, the AAO notes that the Form I-129 Supplement O/P instructs the petitioner, at item #6, to list the date of the alien's prior experience with the P alien. The petitioner indicated "England" rather than providing the requested information. If the petitioner intended to indicate that the beneficiary had a prior working relationship with the principal athlete in England, then such claim would be contradicted by the letter from Ms. Badger, whose letter suggests that her only prior contact with the beneficiary occurred in the United States.

On appeal, counsel stresses that jockey assistants have direct contacts with jockeys and perform duties that are essential to the performance of the jockeys. The AAO does not doubt that certain jockey assistants could qualify for P-1S classification as essential support personnel. However, counsel does not address the primary grounds for denial, which is the petitioner's failure to establish that the instant beneficiary has prior experience and critical skills that are essential to the successful performance of the specific P-1 athlete she is coming to support. The petitioner was instructed in a request for evidence dated May 12, 2006 to "be specific about the beneficiary's work experience with the principal alien," and to submit evidence to support its statements. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Finally, the AAO notes that the evidence submitted in support of the appeal on January 22, 2007 will not be considered. Rather than submitting additional evidence in support of the beneficiary's eligibility for P-1S classification, counsel now claims that the beneficiary is eligible for P-1 classification as an athlete. Counsel's request to amend the petition on appeal is not properly before the AAO. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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).

The regulations at 8 C.F.R. § 214.2(p)(2)(iv)(D) require the filing of an amended petition, with fee, to reflect any changes in the terms and conditions of employment or the beneficiary's eligibility. Counsel's request to reconsider the original petition on appeal as a petition for a P-1 athlete is, therefore, rejected. The petitioner may, of course, file a new I-129 petition and appropriate supporting evidence if it wishes to pursue a P-1 classification visa for the beneficiary.

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. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.