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U.S. Department of Homeland Security
20 Massachusetts Ave., NW., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

MAY 01 2009

FILE: WAC 07 011 53267 Office: CALIFORNIA SERVICE CENTER Date:

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).

John F. Grissom, Acting 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 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 three years. The petitioner operates Taekwondo schools and seeks to employ the beneficiary as a Taekwondo Master/Team Leader for a period of three years.

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: (1) that the beneficiary would be coming to the United States to perform services that require an internationally recognized athlete; or (2) that the beneficiary is an internationally recognized athlete.

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 the petitioner submitted substantial evidence to show that the Beneficiary is an internationally recognized athlete who will be coming into the United States to perform services at an internationally recognized level of performance in the sport of Taekwondo. Counsel asserts that the beneficiary will be coming to the United States to compete as an athlete and to train as a competitor, and that his "primary intention and duty is to compete and keep on training." Counsel asserts that the director should have requested additional evidence if it required clarification as to the duties to be performed by the beneficiary as an athlete. The petitioner submits, among other documents, a revised itinerary, in which it distinguishes between events in which the beneficiary will compete as a professional athlete and events in which he would be performing demonstrations and assisting the petitioner's students.

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) (2006), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:[1]

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[1] The instant petition was filed on October 13, 2006, prior to the passage 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. 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 includes 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.

(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.

The AAO will first address the issue of whether the beneficiary is coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete that has an international reputation. Pursuant to 8 C.F.R. § 214.2(p)(4)(i)(A), an individual P-1 athlete must be coming to the United States to perform services which require an internationally recognized athlete. The beneficiary must be coming solely for the purpose of performing as such an athlete.

In a letter dated October 4, 2006, the petitioner described the beneficiary's proposed duties as a Taekwondo Master/Team Leader as follows:

> [The beneficiary] will be responsible in conducting exhibitions and demonstrations to further the understanding of Taekwondo.
>
> [The beneficiary] will act as our team leader for our school's demonstration team. We will be participating in local, regional and national events to showcase our expertise. Aside from having the duties of a Team Leader, [the beneficiary] will also be assisting our other coaches in different Taekwondo competitions and other events . . .

> As a Taekwondo Master/Team Leader, [the beneficiary] will demonstrate and teach different techniques and proper executions of various kicks, jumps, spins as well as breaking and sparring moves. He will also assist in training and conditioning our students, preparing them for tournaments and events such as the Junior Olympic Championships, U.S. Open, U.S. National Team Trials, Connecticut State Open Taekwondo Championships, Master's Cup, among others.

The petitioner emphasized the beneficiary's experience in exhibitions and demonstrations, his previous experience as a Taekwondo instructor and demonstration team leader in Korea, and his success as a competitive athlete at international tournaments.

The petitioner submitted a list and descriptions of events in which its schools intend to compete between 2006 and 2009, which included, among other events, state opens and championships, Pan American games, Junior Olympics, Senior National Championships, and the U.S. Open International Championships. The petitioner submitted a separate itinerary of interschool demonstrations being held by the petitioner's seven Connecticut-area schools, noting that the beneficiary "will be demonstrating Taekwondo along with the other masters" using such techniques as aerial kicking, breaking, self-defense and sparring.

The petitioner's supporting evidence included a letter from [redacted] of World Champion Taekowndo school, who noted the need for an individual of the beneficiary's caliber to "help demonstrate proper Taekwondo techniques to other students as well as to lead the school and its students in various taekwondo demonstrations, exhibitions and other taekwondo events." Mr. [redacted] expressed his opinion that the events the school intends to compete in require individuals with an international reputation. The petitioner also submitted a letter from [redacted] of Kwon's Olympic Taekwondo school, who noted that the petitioner operates one of the best schools in Connecticut. Mr. [redacted] stated that "the events they will be participating in are considered important to our organization and would require a Taekwondo Master of an international caliber."

The petitioner also submitted evidence of the beneficiary's qualifications, highlighting his credentials as an instructor, demonstration team leader, and referee in the sport, along with evidence of his participation as an athlete in national, international and other competitions. The petitioner did not submit copies of any written contracts between the petitioner and the beneficiary, or a summary of the terms of the oral agreement under which the beneficiary would be employed as required by 8 C.F.R. § 214.2(p)(2)(ii)(B).

The director denied the petition on October 23, 2006, concluding that the petitioner failed to establish that the beneficiary is coming to the United States to perform services that require an internationally recognized athlete. The director noted that according to the itinerary submitted, the beneficiary would participate as a teacher or team leader for the school in amateur events, and serve as a coach and advisor for students attending the school. The director noted that the petitioner provided no evidence to establish that such events would require the participation of an

internationally recognized athlete, and no evidence that the beneficiary has a contract with the petitioner to compete as a professional athlete as required by 8 C.F.R. § 214.2(p)(4)(ii)(B)(1).

On appeal, counsel for the petitioner asserts that the beneficiary will, in fact, compete and participate as a professional athlete in addition to being a team leader and instructor. Counsel contends that the director's decision to deny the petition without first issuing a request for additional evidence was arbitrary, capricious and an abuse of discretion.

Counsel suggests that the director did not carefully review the submitted evidence and asserts that the itinerary of events submitted including "a combination of the events that [the beneficiary] will participate as an athlete, events where he will participate as a demonstrator, as well as those events that students from the Petitioner's school will participate in." Counsel asserts that, if the director found the itinerary ambiguous, then he should have issued a request for evidence instructing the petitioner to submit several schedules of events. The petitioner provides a new itinerary indicating that the beneficiary intends to participate "as a professional competitive athlete" in the following events in 2007-2009: U.S. Open, Massachusetts Open, Chicago Open International Championships, New York Open and Greater New England Taekwondo Champsionships. The petitioner also submits an itinerary of events for the World Taekwondo League along with background information regarding the events and the league.

The petitioner further states the following:

> We would like to reiterate that the Beneficiary will be coming to the United States to compete as an athlete and to train as a competitor. Additionally, the Beneficiary will demonstrate his skills and different techniques in Taekwondo, as well as assist junior athletes of the team. The Beneficiary's primary intention and duty is to compete and keep on training to maintain his excellent athletic form. The demonstrations he will be performing are part of continued Taekwondo training. The job description that states he will also be assisting in instructing the students are secondary in nature. The Service could have easily requested for a more defined letter of support, since the Service needed solid definitions of the duties to e performed as an Athlete. Also, the tournaments that the Beneficiary will compete in are events which have distinguished reputation in the sport, and require an internationally recognized athlete.

Finally, the petitioner submits a letter dated November 8, 2006, "summarizing the verbal agreement" between the petitioner and beneficiary. The petitioner requests that the letter be accepted in lieu of a formal contract. In the letter, the petitioner states the following:

> [The beneficiary] agrees to represent the school and participate in several Taekwondo tournaments, including the upcoming World Taekwondo League tournaments. . . . He will train as an athlete and maintain professional level athleticism. [The beneficiary] will also be performing and demonstrating his skills at various demonstrations, exhibitions and other Taekwondo events. . . . He will also act as a team leader and

> assist in conditioning other junior athletes. The events we intend to engage in require an athlete of international stature. Please be advised that the minimum requirement for participation in the World Taekwondo League is that an athlete needs to be a national medalist. The events that [the beneficiary] intends to engage in are all official events and are considered top Taekwondo events. [The beneficiary] will be competing in the U.S. Open, Chicago Open International championships, Master's Cup, New York Open, among others.

Upon review, the petitioner has not established that the beneficiary is coming to the United States to perform services which require an internationally recognized athlete or that he is coming solely to perform as such an athlete.

As a preliminary matter, Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) (2006) by failing to request further evidence before denying the petition. The cited regulation, as of the date this petition was filed, required the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* [2] The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation.

The director did not deny the petition based on insufficient evidence of eligibility and therefore was not obligated to issue an RFE in this matter. Rather, the director determined that the record contained evidence of ineligibility. Specifically, the director determined based on the evidence submitted that the beneficiary is not coming to the United States solely to compete as an athlete in events requiring the participation of an international recognized athlete, but rather, to act as an instructor and demonstration leader for amateur students in the sport.

Section 214(c)(4)(A) specifically states that section 101(a)(15)(P)(i)(a) refers to an alien who "performs as an athlete" and "seeks to enter the United States. . . for the purpose of performing as . . . an athlete with respect to a specific athletic competition." The P-1 nonimmigrant classification is

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[2] Title 8 C.F.R. § 103.2(b)(8)(ii), the revision of which went into effect on June 18, 2007, currently states:

> If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, [Citizenship and Immigration Services (CIS)] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by [CIS].

Id.; *see also* 72 F.R. 19100 (April 17, 2007).

limited to internationally recognized athletes who are coming to the United States to perform solely as competitive athletes. Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984).

Upon review of the petitioner's initial evidence, there was absolutely no ambiguity in the petitioner's initial evidence with respect to the beneficiary's proposed employment in the United States that could or should have led the director to request "a more defined letter of support" or "solid definitions of the duties to be performed as an Athlete." The petitioner submitted a detailed three-page letter of support in which it never once mentioned that the beneficiary would be competing as an athlete in the United States. Accordingly, there was no reason for the director to request further information regarding the beneficiary's proposed duties as a competitive athlete. The petitioner mentioned the World Taekwondo League in its letter but gave no indication that the beneficiary would compete in this league. The focus of the letter was on the need for qualified instructors to lead, teach, and coach Taekwondo to the petitioner's growing student population, and the beneficiary's proposed duties as a instructor and team leader for the demonstration team. The three individuals who provided letters of support all indicated the beneficiary's intention to serve as a Taekwondo instructor in the United States. None of the letters mentioned that the beneficiary would be competing as an athlete. The petitioner highlighted the beneficiary's credentials as a referee, demonstration leader and instructor in the sport, evidence that would not be relevant to a claim that he will be competing in athletic events requiring an internationally recognized athlete.

With respect to the itineraries, the petitioner submitted a "schedule of events that we intend to participate in." The petitioner referred to the school and its students generally and gave no indication that the beneficiary, individually, would compete in any events.

Therefore, based on the initial evidence, the director appropriately concluded that the beneficiary would not be coming to the United States to participate in athletic events that require an internationally recognized athlete or solely to compete as such an athlete. Rather, the evidence indicated that the beneficiary would be a Taekwondo instructor. There is no provision that would allow an alien to come to the United States individually as a P-1 coach, other than as a P-1 essential support alien accompanying a P-1 athlete or athletes. *See* 8 C.F.R. § 214.2(p)(4)(iv).

On appeal, the petitioner, in the guise of "reiterating" its claims, essentially seeks to amend the beneficiary's proposed responsibilities and states for the first time that the beneficiary's primary intention and duty is to compete as an athlete. As discussed, the petitioner never so much as alluded to the beneficiary's participation in any event as a competitive athlete prior to the adjudication of the petition and the petitioner provides no explanation for this glaring omission. The petitioner also cryptically states that "[t]he job description that states he will also be assisting in instructing the students are secondary in nature." The only duties previously described indicated that the beneficiary would be responsible for instructing Taekwondo students, preparing them for competitions and leading them in demonstrations. The petitioner offers no explanation as to why such duties should now be considered secondary. It simply defies credulity to accept that the petitioner intends to employ the beneficiary primarily or solely as a competitive athlete, yet failed to

mention the "competitive athletics" component of his job when preparing the petition and supporting documentation.

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. A change in the beneficiary's primary job duties from coaching and instruction to competitive athletics is significant, as an athletic coach cannot qualify for P-1 status as an internationally recognized athlete. Therefore, the analysis of this criterion must be based on the job description submitted with the initial petition. As discussed, that job description indicates that the beneficiary will be employed as a Taekwondo instructor and team leader. The AAO therefore concurs with the director's decision to deny the petition based on the petitioner's failure to establish that the beneficiary is coming to the United States to perform services which require an internationally recognized athlete and that he seeks to enter the United States solely to perform as such an athlete with respect to a specific athletic competition.

Finally, even assuming *arguendo* that the petitioner had submitted persuasive evidence on appeal to establish that the beneficiary intends to compete in events requiring an internationally recognized athlete in the United States, it could not be determined that he is coming to the United States solely to participate in competitive athletics. The entire body of initial evidence indicates that he will be coaching and instructing other students, and that is the primary reason for his employment with the petitioner. Any claim that these coaching duties are secondary or merely incidental, given the evidence to the contrary, is unpersuasive.

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

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)(*2*). The petitioner does not claim that the beneficiary meets the criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*i*), (*iii*) or (*vi*) 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*)(*ii*), the petitioner must submit evidence that the beneficiary has participated in international competition with a national team. The petitioner states that the beneficiary was selected to represent South Korea in the 2004 and 2005 World Taekwondo Hanmadang Tournament and the 2006 International Sport of All Taekwondo Championships. The petitioner further stated that these are international and professional-level tournaments, and that the beneficiary was part of a national team that competed at international competitions. The petitioner submitted evidence that the beneficiary was awarded first-place medals in individual events at the 6th Jeju International Sport competition in 2006, and provided certificates of participation for the 2004 and

2005 World Taekwondo Hanmadang competitions. However, the background information provided regarding these competitions does not indicate that these are competitions at which athletes compete on national teams. Accordingly, the evidence submitted does not meet the criterion set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*ii*).

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 an "advisory independent opinion letter" from [redacted], president of the Massachusetts State Taekwondo Association, the governing body of the sport in the state of Massachusetts. The petitioner asserts that there "is no labor organization or union in Taekwondo." However, other evidence submitted by the petitioner, namely a bid manual for the U.S. Open Taekwondo Championships, indicates that the United States Olympic Committee (USOC) recognizes USA Taekwondo as the National Governing Body (NGB) for the sport of Taekwondo in the United States. It is unclear why the petitioner sought a statement from a Massachusetts official for a position located in Connecticut, particularly since there appears to be a recognized national governing body for the sport.

states that the beneficiary's 4th Dan Black Belt distinguishes the beneficiary as "a top player of the sport" worldwide and states that he is "internationally known," because he has competed and won at international Taekwondo events. [redacted] addresses the beneficiary's accomplishments in international and national competitions and concludes that the beneficiary "is truly an internationally and nationally recognized athlete." The letter, apart from the fact that it is not definitively from the appropriate governing body in the sport, is lacking explanation of the significance of the beneficiary's accomplishments in specific tournaments, or how such results conveyed international recognition on the beneficiary.

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 representatives of two other U.S. Taekwondo schools, which are similar in content to the letter from [redacted] The authors summarize the beneficiary's accomplishments and concluded that he is internationally recognized, but fail to explain the significance of the accomplishments and how the beneficiary's achievements are renowned, leading, or well-known in more than one country.

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*). The petitioner asserts that the beneficiary's participation and awards in international tournaments such as the World Taekwondo Hanmadang Tournament and Jeju International Sport for All Taekwondo Championships are sufficient to satisfy this requirement. The petitioner states that "am amateur Taekwondo athlete would not have been able to qualify for these tournaments, as there would be qualifying events and tournaments as athlete has to participate in before going to these types of tournaments. Participation in these tournaments is not easily achieved." However, the petitioner offers no documentary evidence to establish the participation requirements for the above-referenced

tournaments, nor any other evidence to establish that winning an event in such tournaments would amount to a "significant honor or award" in the sport of Taekwondo. 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)). Accordingly, the petitioner has not submitted sufficient evidence that the beneficiary has achieved a significant honor or award in his sport, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*).

In summary, 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 sport of Taekwondo, and the appeal will be dismissed for this additional reason.

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.