



U.S. Citizenship
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FILE: EAC 07 137 53235 Office: VERMONT SERVICE CENTER Date:

NOV 25 2009

IN RE: Petitioner:
Beneficiary:



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:



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).

Perty Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the nonimmigrant petition. The director subsequently issued a notice of intent to revoke, and after reviewing the petitioner's rebuttal evidence, revoked the approval of the petition on May 28, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify 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 is self-described as a provider of support personnel for the horse racing industry. It seeks to employ the beneficiary temporarily in the United States as a P-1 athlete to serve as a professional jockey in competitive horse races.

The director initially approved the petition on April 20, 2007. Subsequently, the U.S. Embassy in Caracas, Venezuela interviewed the beneficiary in connection with his P-1 visa application and found that he was unable to explain his intended itinerary in the United States. A further investigation by the Kentucky Consular Center and the Embassy's Fraud Prevention Unit resulted in concerns regarding the existence of the petitioning organization as a bona fide business. Accordingly, the director advised the petitioner of these findings and of U.S. Citizenship and Immigration Services's (USCIS's) intent to revoke the approval of the petition on March 17, 2009. The director ultimately revoked the approval of the petition determining that the petitioner failed to submit evidence that it qualifies as an agent pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(2), and failed to submit the requested detailed nature of the proposed events or activities or an itinerary, as required by 8 C.F.R. § 214.2(p)(2)(ii)(C).

The petitioner subsequently filed an appeal. On the Form I-290B, Notice of Appeal or Motion, where asked to provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed, counsel stated: "Wrong interpretation of the law." Counsel indicated that he would submit a brief and/or additional evidence to the AAO within 30 days. The appeal was filed on June 29, 2009. As of this date, no additional evidence has been incorporated into the record of proceeding, and the record will be considered complete.¹

Title 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners in P-1 petition filings:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and

¹ The AAO contacted counsel by facsimile on October 23, 2009 to advise him that no brief or evidence had been incorporated into the record as of that date, and to afford him an opportunity to resubmit any documentation that had been timely submitted. Counsel has not responded to the AAO's correspondence.

the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

- (2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

The director revoked the approval of the petition based on the petitioner's failure to provide evidence that the petitioner qualifies as a *bona fide* agent eligible to file the petition pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(2). In revoking the approval, the director observed that the petitioner did not submit the required complete itinerary of services or engagements. The director further noted that the evidence submitted suggests that the petitioning company exists solely to file petitions with USCIS and is neither an agent performing the function of an employer or a company in business as an agent. In revoking the approval of the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification.

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 revocation of the petition approval. Counsel's general objection that the director's decision amounted to a "wrong interpretation of the law," without specifically identifying any errors on the part of the director, is 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).

The petitioner has continually emphasized that it is a "bona fide U.S. entity." The AAO acknowledges that the petitioner is a corporation that has been registered in the State of Florida and the record shows its status as "active," meaning it has met its annual report filing requirements and has not been voluntarily or administratively dissolved. However, the director specifically requested documentary evidence to establish that the petitioner in this matter meets the conditions for a *bona fide* agent eligible to file a P nonimmigrant

petition, pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E). The director acknowledged the petitioner's claim that it provides its services free of charge and does not maintain a bank account, receive any income or pay any taxes. However, the director emphasized that, according to the beneficiary's contract with the petitioner, he is required to pay the petitioning company 25 percent of his earnings, thus contradicting the petitioner's assertion that it cannot produce tax returns because it does not generate any income.

Based on the petitioner's assertions, the beneficiary will only work in the United States as a jockey if the petitioner is able to arrange races for him. There is no "employer" *per se*, the beneficiary has no guaranteed salary, and instead is required to give a significant share of his earnings to the petitioner under the terms of the agreement. As noted by the director, there is also no planned itinerary of events beyond a general racing schedule that the petitioner printed from the internet. The regulations at 8 C.F.R. §§ 214.2(p)(2)(ii)(C) and 214.2(p)(iv)(E) require the petitioner to provide such an itinerary. Given the paucity of the evidence in the record, it was perfectly reasonable to require the petitioner to provide evidence that it is actually doing business as an agent and that it has arranged events for the athlete it has sponsored. Any 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). Moreover, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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.