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**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**

D9

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2010

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for 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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. 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), as an internationally-recognized athlete. The petitioner is self-described as a polo and polo horse business. It seeks to employ the beneficiary as a professional polo player for a period of five years. The beneficiary is currently employed with a different employer as a P-1S essential support personnel.

The director denied the petition on February 10, 2010, concluding that the petitioner failed to establish that the beneficiary has achieved international recognition in the sport based on his reputation. The director noted that the evidence submitted at the time of filing satisfied none of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B), of which at least two must be satisfied to establish the beneficiary's eligibility. The director acknowledged that the petitioner had requested additional time in which to respond to a request for additional evidence issued on December 2, 2009, the response to which was due on or before January 1, 2010. The director emphasized that, pursuant to 8 C.F.R. § 103.2(b)(8)(iv), additional time to respond to a request for evidence may not be granted. Furthermore, no additional evidence had been received as of February 10, 2010.

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, the petitioner states:

> In regards to your Notice of Decision dated February 10, 2010, please be advised that we responded to the original Request for Evidence on February 10, 2010 and your office received our complete response on February 11, 2010. We have attached a complete response to your original Request for Evidence. On December 31, 2009, we requested an extension of time 30-45 days. Again your office received our complete response to your Request for Evidence on February 11, 2009 [*sic*]. Our response to your original Request for Evidence established that the beneficiary is an internationally recognized athlete who seeks to temporarily perform as a polo player in the international polo tournaments and that the beneficiary has established an international reputation based upon his achievements in international competition. We, the petitioner have submitted all required documentation to the requested evidence. The beneficiary qualifies as an internationally recognized athlete as previously submitted and has been resubmitted for your convenience.

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)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i)(I), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

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)(3), 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, and requires that the petitioner submit documentation to satisfy at least two of the seven evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*) if it claims that the beneficiary is an internationally-recognized athlete.

The director denied the petition based on the petitioner's failure to submit evidence to satisfy any of the criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*). The petitioner filed the petition with letters from three polo players who stated that the beneficiary has participated in polo at an international level. However, the letters are not clearly from "recognized experts" nor do the letters detail how the beneficiary is internationally recognized. As such the evidence does not meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*). The director issued a request for additional evidence on December 2, 2009, in which it requested that the petitioner submit evidence to establish that the beneficiary is an internationally-recognized athlete. The petitioner was given until January 1, 2010 to submit its response and was notified that pursuant to 8 C.F.R. § 103.2(b)(11), the failure to submit all evidence requested at one time may result in the denial of the petition.

On December 31, 2009, the petitioner submitted a letter requesting an additional 30 to 45 days to submit the requested evidence. The director denied the petition on February 10, 2010 and clearly explained in the notice of denial that the regulation at 8 C.F.R. § 103.2(b)(8)(iv) provides that additional time to respond to a request for evidence may not be granted.

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. On appeal, the petitioner claims that it submitted, on February 11, 2010, a response to the request for evidence that establishes the beneficiary's eligibility for the requested classification. Given that the director's decision was issued on February 10, 2010 and the response to the request for evidence was due on January 1, 2010, the petitioner clearly has not articulated or identified any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner does not claim that the record before the director included evidence to establish the beneficiary's eligibility as an internationally-recognized athlete. Nor does the petitioner acknowledge or rebut the director's detailed explanation as to why the petitioner's request for an extension of time in which to respond to the RFE was not granted.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

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.