U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

[redacted]

D9

DATE: DEC 16 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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:
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, with a fee of $630. 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,

Perry 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will 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 to a P-1 athlete pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner is self-described as a professional equestrian business. It seeks to employ the beneficiary in the position of stable groom for a period of three years.

The director initially approved the petition on April 12, 2010. Subsequently, the beneficiary's application for a P-1S visa was denied at the U.S. Consulate in La Paz, Bolivia, and the matter was returned to the service center for review. The director issued a notice of intent to revoke in accordance with 8 C.F.R. § 214.2(p)(10)(iii), advising the petitioner that the petition had been returned by the U.S. Consulate and that additional review of the record indicated that the petition approval was granted in error. The director ultimately revoked the approval of the petition determining that the petitioner failed to establish that the beneficiary meets the regulatory requirements applicable to essential support personnel pursuant to the definition at 8 C.F.R. § 214.2(p)(3). The director also noted for the record that the petitioner did not submit a written consultation from a labor organization.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary's application for a P-1S visa was inappropriately denied by the U.S. Consulate and that the petition never should have been returned to USCIS for further review. Specifically, counsel asserts that the interviewing consular officer was under the mistaken belief that the beneficiary is a horse trainer, rather than a stable groom, and thus asked the beneficiary irrelevant questions that he was unable to answer. Counsel contends that the evidence of record establishes that the beneficiary, as a stable groom, will provide essential, critical skills and experience to show rider [redacted], who has been admitted to the United States as a P-1 athlete for the petitioning organization.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary qualifies as essential support personnel for the P-1 athlete, as the evidence of record does not establish that he 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 athlete. Accordingly, the director's decision to revoke the approval of the petition will be affirmed and the appeal will be dismissed.

I. The Law

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 the beneficiary is qualified to perform the services and the services cannot be readily performed by a United States worker.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) states:

> (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
>
> (B) Evidentiary criteria for a P-1 essential support petition. A petition for P-1 essential support personnel must be accompanied by:
>
> (1) A consultation for a labor organization with expertise in the area of the alien's skill;
>
> (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
>
> (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The regulation at 8 C.F.R. § 214.2(p)(10)(iii)(A) states that the Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

> *(1)* The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
>
> *(2)* The statement of facts contained in the petition were not true and correct;
>
> *(3)* The petitioner violated the terms or conditions of the approved petition;
>
> *(4)* The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or
>
> *(5)* The approval of the petition violated paragraph (p) of this section or involved gross error.

II. Discussion

The record of proceeding includes the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, a Notice of Intent to Revoke dated September 17, 2010, the petitioner's response to the notice of intent to revoke, the director's notice of revocation dated November 12, 2010, and the petitioner's appeal.

The primary issues to be addressed in this proceeding are: (1) whether the petitioner established that the beneficiary will be performing services that cannot be performed by a United States worker and that are essential to the successful performance of services by the principal P-1 athlete; and (2) whether the beneficiary has the

requisite prior relationship providing such services to the principal athlete. The beneficiary's experience and qualifications as a stable groom have been established.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 5, 2010. The petitioner indicated that the beneficiary would serve in the position of "stable groom." Where asked to list the dates of the beneficiary's prior experience with the P-1 alien, the petitioner stated "2005 to Present." In a letter dated January 22, 2010, the petitioner indicated that the beneficiary would serve as stable groom for "our organization's equestrian team" and "perform duties as a P-1S essential support personnel for a P-1 worker." Specifically, the petitioner stated:

> He will be in charge in controlling the feeding of horses, including applying veterinary supplements. He will prepare the horses for each competition. He will provide maintenance to our riding equipment. He will provide daily check-ups and monthly farrier services. He will provide first aid and basic veterinary services. He will provide quarterly dental services and transport horses to horseshows [*sic*] and competitions. He will be responsible in maintaining all of our riding equipment necessary for competition and daily practice exercises.
>
> It is imperative that our equestrian team be provided with the necessary specialized skills that [the beneficiary] possesses. The P-1S worker's experience is based in specialization seminars and knowledge in grooming horses for high level competitions, emergency veterinary labors, and basic dental services. It is very difficult to find an individual with these specializations and to have this kind of responsibility to take care of these high level competitive horses and of a very high monetary value.

The petitioner summarized the beneficiary's experience, noting that he has performed grooming work for "various equestrian teams" that have participated in national and international competitions in Bolivia, Chile and Brazil. The petitioner also submitted a copy of the beneficiary's resume, in which he indicates that he has held the following positions in the equestrian field: (1) [redacted] (2005-2006); [redacted] (2006-2007); [redacted] 2007 to 2008); and [redacted] (2008 to present). The petitioner submitted letters from the beneficiary's employers, verifying his experience in the stated positions.

The director issued a request for additional evidence on February 10, 2010, in which he instructed the petitioner to provide: (1) evidence of the immigration status of the P-1 principal athlete for whom the beneficiary provides critical support; (2) a written consultation from a U.S. labor organization which has skill in the beneficiary's area of expertise; and (3) evidence that the beneficiary provides services that are essential to the successful performance of services of the principal P-1 athlete, and which cannot be readily performed by a U.S. worker. The director requested a statement describing when the beneficiary and the principal started working together and the conditions requiring the critical support. Finally, the director advised the petitioner that "being a needed, well-qualified and available employee for a business is not what the classification requested is meant for."

In response to the request for evidence, the petitioner provided a letter from the principal P-1 athlete, [redacted] a show jumper whose petition was filed concurrently with the beneficiary's. [redacted] states:

> One important part of the person in our team is [the beneficiary]. He has been my right hand in the last 5 years that we have been working together. I have taught him everything there is to know about horse care and preparation to very tough competitions. [The beneficiary] has also done some specializing courses in Veterinary Aid and Shoeing, two very important aspects in our daily training.
>
> One of his duties is to check every morning whether each horse has finished their food and water or if they have all rest well, that has to monitored [*sic*] daily by taking temperature and observing and changes in behavior, like laying down in a different place than the one usually picked by the horse. If we find that any of the regular habits are modified then we immediately have to take some action by diagnosing and then medicating the horse.
>
> These actions can only be done by a person that has been around horses for several years and also that have been instructed properly. This is the reason we absolutely need the presence of [the beneficiary] as part of our team in order to achieve our goals.

The director also requested a written advisory opinion from an appropriate labor organization with expertise in the beneficiary's area of ability. The petitioner responded that there is no labor organization in the United States that represents stable groomers or assistants to equestrian riders, and therefore requested that the director render a decision based on the evidence of record. After reviewing the petitioner's response, the director initially approved the petition on April 12, 2010.

Notice of Intent to Revoke

On September 17, 2010, the director issued a notice of intent to revoke the petition approval. The director advised the petitioner as follows:

> It has now come to the attention of the U.S. Citizenship and Immigration Services (USCIS) that when the beneficiary was interviewed at the consulate in La Paz, Bolivia, discrepancies were found concerning the eligibility of the beneficiary for the classification sought. Also upon further review of the record it has been found that the beneficiary did not function in a scope and capacity that would support the evidentiary criteria for a P1S essential support petition. Simply providing work or needed services to a business that has received an individual in P-1 status does not confer eligibility. The relationship and duties provided to the principal P-1 must be essential, critical and require co-dependent experience.
>
> In addition to information revealed at the interview, an additional review of the record indicates that the petition was granted in error. The duties and work required and performed as well as the relationship to the principal do not support that required for a P1S classification.

The director provided the petitioner with a copy of the memorandum from the U.S. Consulate which partially informed the director's notice of intent to revoke. The consular report indicates that the beneficiary was unable to "describe in detail how he does the job of actually training horses," and notes that his skills as described during the interview "seem to be those of a stable hand or groom" rather than essential support personnel. Specifically, the consular officer stated that the petition was "for a professional in the training of horses for a very specific purpose."

In response to the notice of revocation, counsel for the petitioner argued that the beneficiary's P-1S visa was improperly denied and that the petition should not have been returned to the Service Center. In addition, counsel claimed that "the Service's conclusion to revoke the approval of the P1S petition is entirely based on information obtained from the U.S. consulate regarding the beneficiary's visa interview." Counsel emphasized that the consular officer appeared to have been under the mistaken impression that the beneficiary would serve as a horse trainer, and not as a stable groom as reflected on the Form I-129, and therefore asked the beneficiary irrelevant questions during the course of his visa interview.

Counsel asserted that previously provided evidence did in fact establish that the proffered position of stable groom qualifies as essential support personnel, and that the beneficiary possesses the skills required for the position. In addition, counsel maintained that "the petition was not approved in error and the consular arguments used to recommend the revocation of the approval should be ignored since these are based on questions and inquiries made on the incorrect job title of horse trainer."

The only new evidence submitted in response to the notice of intent to revoke was a letter from the beneficiary, in which he sought to clarify the exact nature of his proposed duties for the petitioner. The beneficiary indicated that he is "to be responsible for the well-being and integrity of the 12 competition horses under his care and responsibility," and to "supervise and control two stables with regards to the care and safety of the horses and facilities." The beneficiary provided a more detailed description of each of the duties that were previously delineated, and concluded that his "position and performance are essential for the performance and support of the equestrian athlete [redacted] The beneficiary stated that he is "keenly aware" of the needs of [redacted] and the horses, and possesses the knowledge and experience to perform the work.

Revocation and Appeal

The director revoked the approval of the petition on November 12, 2010, concluding that the petitioner failed to overcome the proposed grounds for revocation. The director acknowledged that the petitioner correctly claimed that the consular officer failed to consider the beneficiary's duties as a stable groom when interviewing him for a visa. However, the director noted that further review of the record revealed that the beneficiary, as a stable groom does not have a "co-dependent" relationship with the P-1 athlete, nor does he perform duties that are essential to the performance of the athlete. Rather, the director determined that the beneficiary would perform duties that are essential to the petitioner's equestrian business.

On appeal, counsel for the petitioner reiterates many of the same arguments made in response to the notice of intent to revoke, and once again criticizes the actions of the officer who conducted the beneficiary's visa interview at the U.S. consulate in La Paz.

Upon review, the AAO concurs with the director's determination that the petition was approved in error. The petitioner has not established that the beneficiary has the requisite prior relationship with the principal P-1 athlete or that he 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 athlete. The petition approval was properly revoked pursuant to 8 C.F.R. § 214.2(p)(10)(iii)(5), and the appeal will be dismissed.

As a preliminary matter, while the AAO acknowledges counsel's argument that the beneficiary's visa interview was improperly handled, this office has no jurisdiction to review the actions of the Department of State consular officer. Once the consular officer returns an approved petition to USCIS for review, the

director may either affirm the approval or initiate revocation proceedings. Here, the director reviewed the petition and determined, independently from the findings of the consular officer, that the approval of the petition involved gross error. The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

> This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

Id.

Accordingly, upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

Here, at the time of filing the petition, the petitioner made no reference to any prior relationship between the beneficiary and the principal P-1 athlete. In fact, neither counsel nor the petitioner named the principal P-1 athlete with whom the beneficiary would work but rather stated that "it is imperative that our *equestrian team* be provided with the necessary specialized skills that [the beneficiary] possesses." (Emphasis added). While the petitioner has provided sufficient evidence of the beneficiary's qualifications to perform the duties of a stable groom, the AAO notes that the petition was submitted without any supporting evidence related to the beneficiary's prior relationship with the principal athlete. 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)).

While the petitioner subsequently submitted a letter from [redacted] the AAO notes that the letter is extremely vague with regard to the details of his prior working relationship with the beneficiary. He states that the beneficiary "has been my right hand in the last 5 years that we have been working together," and that he taught

the beneficiary "everything there is to know about horse care and preparation." [redacted] does not provide any details of their working relationship, identify where or in what capacity they worked together, or explain how the beneficiary performed duties that are so specific and critical to his performance that they could not be performed by a U.S. worker. Rather, he states that the types of duties performed by the beneficiary, such as checking to see whether horses have finished their food and water, "can only be done by a person that has been around horses for several years" and "instructed properly."

In his own letter, the beneficiary simply indicated that he would be responsible for caring for 12 horses in two stables, and that he believes that his position is essential for the performance and support of [redacted]. He did not state that he has a prior working relationship with [redacted] or provide any details of such relationship. While the petitioner has provided a detailed employment history for the beneficiary supported by letters from his employers verifying the specific stables and teams for which he has worked as a groom, no similar verified employment history has been provided for [redacted]. The AAO cannot conclude based on the minimal documentation provided that the beneficiary and [redacted] have an existing working relationship or that the beneficiary provides services that are critical to [redacted] performance.

Furthermore, even if the AAO assumes, *arguendo*, that the beneficiary has previously worked as a groom with or for the principal athlete, the petitioner has not established that the duties performed by a stable groom require a "highly skilled, essential person," integral to the performance of the P-1 alien, or that stable grooms perform support services which cannot be readily performed by a United States worker. The record demonstrates that the beneficiary has acquired through experience and formal education the knowledge and skills necessary for the daily maintenance, feeding, monitoring, grooming, transport and basic veterinary care of show horses. The beneficiary will be responsible for performing these services for the petitioner's 12 horses and two stables for the benefit of the entire equestrian team and business, and is not being offered employment to specifically support the needs of the individual P-1 athlete. A review of the beneficiary's employment history indicates that he has consistently worked for an equestrian business, stable or a team with no mention of any services provided for a specific equestrian athlete or athletes.

The petitioner has neither advanced nor documented an argument that the duties of a stable groom at its equestrian facility could not be performed by a United States worker. [redacted] himself stated that the duties the beneficiary performs require someone with proper training who has "been around horses for several years." It is reasonable to conclude, and has not been shown otherwise, that many U.S. stable grooms would easily meet these qualifications and could satisfactorily perform the same duties. In sum, the petitioner has failed to establish that the beneficiary has experience in providing essential support services to the principal P-1 athlete as required by the regulation at 8 C.F.R. § 214.2(p)(3). The documentary evidence in the record fails to sufficiently describe the beneficiary's prior essentiality, critical skills and experience with the P-1 athlete, as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(*2*). Accordingly, the petitioner has not established that the beneficiary qualifies for classification under section 101(a)(15)(P)(i) of the Act as an essential support alien for the principal athlete.

The burden of proof in visa petition proceedings 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.