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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2011

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a 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:

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, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(i)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(a). The petitioner is an agency providing representation to professional athletes. The petitioner requests that the beneficiary be granted P-1 status so that he may accept employment as a professional polo player

At the time of filing, the beneficiary was in the United States pursuant to an approved P-1S petition. Accordingly, the petitioner requested that U.S. Citizenship and Immigration Services grant him a change of status and extend his stay for a period of five years.

The director issued a Notice of Intent to Deny the petition on March 22, 2010, advising the petitioner of her intent to deny the petition and the extension of status request. The director observed that the beneficiary was granted P-1S status in 2007 in order to work as a horse groom/trainer and the evidence in the instant record indicates that he has in fact been competing as a polo player for several teams, thus failing to maintain his nonimmigrant status. The director also questioned the beneficiary's qualifications as a P-1 polo player, noting that the instant record and the prior P-1S petitions filed on behalf of the beneficiary contain several discrepancies, making it unclear whether the beneficiary is a trainer/groomer or a professional polo player. After reviewing the petitioner's rebuttal evidence, the director denied the petition on May 5, 2010, observing that the petitioner's response did not overcome the discrepancies in the record. The director concluded that the evidence provided was therefore insufficient to satisfy any of the criteria for internationally recognized athletes pursuant to 8 C.F.R. § 214.2(p)(4)(ii). Accordingly, the director determined that the petitioner failed to establish that the beneficiary qualifies as an internationally recognized athlete.

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 asserts that the beneficiary never violated his P-1S status, as he has only worked in the United States as a polo trainer/groom. Counsel contends that, while the beneficiary has played in polo tournaments in the United States, he has never been compensated to play, nor has he played as a professional. Nevertheless, counsel asserts that the beneficiary's participation in the sport of polo in the United States, Canada and Argentina has earned him international recognition as a polo player, making him eligible for P-1 status. The petitioner submits copies of previously submitted evidence, along with a copy of the beneficiary's income tax filings for the years 2005 through 2009, in support of the appeal.

## **I. The Law**

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) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
  - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
  - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and
  - (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . .[.]

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)(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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that petitions for P nonimmigrant aliens shall be accompanied by the following evidence:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

## II. Discussion

The sole issue before the AAO is whether the petitioner established that the beneficiary qualifies as an internationally recognized athlete pursuant to section 101(a)(15)(P)(i)(a)(I) of the Act. The director questioned the credibility and consistency of the evidence submitted with respect to the beneficiary's career as a polo player. The director further determined that the petitioner's evidence satisfied none of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2), of which two must be satisfied in order to establish the beneficiary's eligibility as an internationally recognized athlete.<sup>1</sup>

The AAO notes that contrary to counsel's arguments on appeal, the director did not deny the petition based on a finding that the beneficiary violated his prior P-1S status. Although the petitioner's requests to change the beneficiary's status from P-1S to P-1 and to extend his stay are combined on the same Form I-129 petition, the director makes a separate determination on each request. Any determination that the beneficiary failed to maintain the previous status would cause the director to deny the extension of stay request. 8 C.F.R. § 214.1(c)(4). There is no appeal from the denial of an application for extension of stay filed on Form I-129, thus the AAO lacks jurisdiction to address that issue. 8 C.F.R. § 214.1(c)(5).

At the time of filing, counsel described the beneficiary as a "world class, internationally recognized Professional

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<sup>1</sup> Although the petitioner also refers to the beneficiary as a "professional athlete," it has neither articulated a claim nor presented evidence that the beneficiary qualifies as a professional athlete as that term is defined in the section 204(i)(2) of the Act. As such, the AAO will not consider whether the beneficiary qualifies as a professional athlete pursuant to section 101(a)(15)(p)(i)(a)(II) of the Act.

Polo Player." The petitioner submitted: an employment letter from [REDACTED]; reference letters from polo players and an official of [REDACTED]; an itinerary of tournaments in which the beneficiary is expected to compete during the 2010 to 2015 polo seasons; evidence of the beneficiary's competition results with various polo teams; and several articles from polo websites and publications which mention the beneficiary. As noted above, the petitioner was given an opportunity to submit additional evidence in support of the petition in response to a Notice of Intent to Deny. The AAO has reviewed the record in its entirety.

Neither the petitioner nor counsel has addressed the evidentiary criteria applicable to internationally-recognized athletes nor identified under which criteria they believe the beneficiary qualifies. Accordingly, we will address each criterion under 8 C.F.R. § 214.2(p)(4)(ii)(B)(2) below.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i), the petitioner must submit evidence that the beneficiary has participated to a significant extent in a prior season with a major United States sports league. The petitioner has submitted ample evidence that the beneficiary has played with various polo teams in the United States since at least 2005, as well as testimonial evidence identifying the beneficiary as a professional polo player in the United States. The petitioner also submitted at the time of filing the petition an advisory opinion from [REDACTED] of the [REDACTED] who states that the beneficiary "is in good standing" with the organization and participated in several [REDACTED] tournaments in 2009. However, in response to the Notice of Intent to Deny and on appeal, counsel has asserted that the beneficiary is not registered with the [REDACTED] does not play polo professionally, has worked only as a trainer/groom in the United States pursuant to his approved P-1S petitions, and plays polo in the United States without compensation, either "to help him understand how to train the polo horses better," or to advance his own skills and reputation as a polo player.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on these conflicting statements, the AAO cannot conclude that the beneficiary has been a USPA professional player. Further, even assuming *arguendo* that the beneficiary has played polo professionally and is a member of the USPA, additional evidence would be required to establish that the beneficiary has participated to a significant extent in a prior season with a "major United States sports league." It is unclear based on the evidence of record how professional polo is organized in the United States and which clubs, teams or leagues qualify as "major league" within the sport. As such, the AAO must conclude that this criterion has not been met.

To meet the second 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 has submitted evidence that the beneficiary has played polo for several clubs or teams in the United States, for the [REDACTED] and for one or more unidentified clubs or teams in Argentina. The petitioner has not claimed that the beneficiary has participated in international competition with a national team and the evidence submitted would not support such a claim. Accordingly, this criterion has not been satisfied.

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iii) requires the petitioner to submit evidence that the beneficiary has participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition. The petitioner has not submitted evidence to meet this criterion.

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. The petitioner submitted the above-referenced letter dated February 10, 2010 from [REDACTED] states:

[The beneficiary] is a professional polo player of international acclaim. Furthermore, the U.S. Polo Association was fortunate to have [the beneficiary] participate in several tournaments during 2009. I personally know [the beneficiary] and have played polo with him on occasion. [The beneficiary] has demonstrated a high level of achievement in polo substantially above that ordinarily encountered through the U.S. Polo Association. Due to his outstanding efforts, the U.S. Polo Association assigned a handicap ranking of two (2) to [the beneficiary]. This ranking qualifies him as a professional polo player under the U.S. Polo Association handicap ranking system. I support the P-1 visa application of this stellar athlete.

In response to the Notice of Intent to Deny, the petitioner submitted a letter from retired [REDACTED] who states that he has "taken the opportunity to check with the United States Polo Association to see if [the beneficiary] has ever been given a handicap by the Association or been a player. The answer is he has not." [REDACTED] further stated that the beneficiary "would not be able to play without having been registered and handicapped by the United States Polo Association." The evidence of record clearly indicates that the beneficiary has in fact played polo in the United States with various clubs and teams; however, the petitioner has not explained how he was able to do so without an assigned handicap or registration with the USPA.

The petitioner also submitted a letter from [REDACTED] states that he is a member of the USPA Ruling Board of Directors and Chairman of the USPA Handicap Committee. He states that the beneficiary has played polo, but was not compensated as a professional polo player. [REDACTED] does not indicate whether the beneficiary is a registered player or whether he has a handicap.

On appeal, counsel asserts that [REDACTED] has practiced with [the beneficiary] but is confusing [the beneficiary] with his brother [REDACTED] as [the beneficiary] has a handicap of "NR" with the USPA which means "Not Registered." The AAO notes that the tournament results submitted to establish the beneficiary's achievements as a polo player in the United States clearly show his handicap as "(2)." In addition, the record contains a summary of the terms of the beneficiary's employment agreement with [REDACTED] owner of [REDACTED], signed by [REDACTED] and the beneficiary, in which the beneficiary is identified as "a 2 goal player." Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Nevertheless, it appears that the petitioner and counsel are seeking to discredit [REDACTED] statements that the beneficiary has played professional polo, that he is registered with the USPA, and that he has been assigned a handicap of two. As such, the AAO finds no basis on which to accept [REDACTED] opinion that the instant beneficiary is "a professional polo player of international acclaim," as counsel now appears to be claiming that [REDACTED] was referring to the beneficiary's brother. Regardless, [REDACTED] conclusory assertion that the beneficiary enjoys "international acclaim" would be insufficient to satisfy this criterion, as the regulation requires an advisory opinion that "details how the alien or team is internationally recognized." No other advisory opinion from an official of the USPA has been submitted. As such, the petitioner has not submitted evidence to satisfy this criterion.

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. The petitioner submitted "professional polo player endorsement letters" from [REDACTED] and [REDACTED], all five and six goal players. [REDACTED] states that he and the beneficiary have "played together in many tournaments." He praises the beneficiary's energy, confidence, horse handling, agility, foresight, strategy, communication, natural aptitude and love of the sport of polo, but he does not detail how the beneficiary is internationally recognized. The letter from [REDACTED] is essentially identical in content. [REDACTED] states that the beneficiary is a professional player, and "a very capable player who adds passion to our sport." He praises the beneficiary's "skilled performances on the field." His letter does not detail how the beneficiary is internationally recognized.

[REDACTED] describes the beneficiary as a professional polo player, and states that he has shared the polo field with him on many occasions. He praises the beneficiary as "a very capable player who adds excitement to our already exciting sport," and states that "the fluidity of [the beneficiary's] movements with his mount adds to the beauty of our sport." Finally, [REDACTED] describes the beneficiary as a professional polo player, "an exceptional player," and "a player with great skill and showmanship."

In response to the Notice of Intent to Deny, the petitioner submitted the above-referenced letters from [REDACTED] and [REDACTED] as well as a letter from [REDACTED], sponsor for the [REDACTED]. [REDACTED] states that he "would like to see [the beneficiary] play professionally in the sport of polo," based on his "potential as a polo player."

Upon review, none of the persons providing testimonials have detailed the beneficiary's accomplishments in the sport or how he is internationally recognized. The letters are written in vague language and do not establish how the beneficiary's achievements are renowned, leading, or well-known in more than one country. While it appears that the beneficiary has earned the respect of some successful U.S. polo players, the petitioner has not submitted any written statements that satisfy the criterion at 8 C.F.R. §

214.2(p)(4)(ii)(B)(2)(v).

To meet the sixth criterion, the petitioner must submit evidence that the individual or team is ranked, if the sport has an international ranking. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi). At the time of filing, counsel indicated that the petitioner was submitting evidence pertaining to the "Polo International Ranking System." The petitioner submitted an article titled "Polo Handicaps" from the website <http://www.sportpolo.com>. Counsel indicated that players are rated on a scale from minus 2 to 10, with minus 2 indicating a beginning or novice player and a 10 goal rank the highest handicap possible, held by fewer than a dozen players. Counsel stated that approximately two-thirds of the USPA rated players carry a rating of 2 goals or less, that only a small number of players advance beyond 3 goals, and that "a rating of 2 goals and above usually indicates a professional player."

As noted above, the evidence submitted at the time of filing, including the letter from [REDACTED] of the USPA and the beneficiary's own contract with [REDACTED], indicated that the beneficiary is a two goal player. Counsel now denies that the beneficiary has ever been assigned a handicap by the USPA, despite appearing to claim at the time of filing that the beneficiary meets this criterion based on such a ranking. Therefore, even if we were to determine that a two goal handicap is equivalent to an "international ranking" in the sport, the inconsistent statements in the record prevent a determination that the beneficiary has such a ranking. Further, we note that [REDACTED] referred USCIS to the website of the USPA for additional information. Although [REDACTED] indicated that a handicap ranking of two qualifies the beneficiary as a professional polo player under the USPA handicap ranking system, the USPA web site indicates that "Rating of 5-goals and above usually belong to professional players."<sup>2</sup> For the foregoing reasons, the petitioner has not established that the beneficiary meets this criterion.

The seventh and final criterion requires the petitioner to submit evidence that the alien or team has received a significant honor or award in the sport. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii). The petitioner submitted evidence that the beneficiary, as a member of the [REDACTED], won the [REDACTED] tournament held at [REDACTED]. According to an article from [www.poloblogs.com](http://www.poloblogs.com), the beneficiary was named "Most Valuable Player" of the match. The petitioner provided no background information about the tournament itself, thus it cannot be concluded that the team's win was a "significant honor or award." According to the above-referenced letter from [REDACTED] the beneficiary has never been a registered USPA player and would not be able to play in a professional or USPA event. Further, the petitioner has not provided any evidence to establish that reporting of a victory by the "Poloblogs" website alone establishes the significance of the honor or award.

The petitioner submitted a magazine article titled [REDACTED] published in [REDACTED], which mentions the beneficiary's play in [REDACTED] held by the [REDACTED]. The article mentions that the beneficiary's team, [REDACTED] lost to the beneficiary's brother's team, [REDACTED] and did not advance to the tournament final.

<sup>2</sup> See "The Polo Handicap," [http://us-polo.org/index.php?option=com\\_content&view=article&id=31&Itemid=124](http://us-polo.org/index.php?option=com_content&view=article&id=31&Itemid=124) (accessed on December 27, 2010).

The petitioner also submitted photographs and results from several tournaments at the time of filing. The beneficiary was: a member of the team "White Oak" which won the USPA Pacific Coast Circuit Governor's Cup; a member of the 8-Goal runner-up team "Gehache" in the "February League" at the Eldorado Polo Club; a member of the team "Parklane" which won the Lt. Governor's Cup in another USPA Pacific Coast Circuit Governor's Cup Tournament; a member of the runner-up team "Double Eagle," in the 4 Goal/6 Chukker "February League"; a member of the winning team "Double Eagle" in the 4 Goal/6 Chukker January League; a member of the runner-up team "White Oak" in the 8 Goal League in the January Leagues; a member of the winning team "California Polo" in the Irish Cup, Flight III in 2006; and a member of the winning team "California Polo" in a "Men Only" Tournament also held in 2006. According to the evidence submitted, the Pacific Coast Circuit Governor's Cup is "the largest amateur polo tournament in the United States." No information has been provided regarding the other tournaments or leagues in which the beneficiary has played in the United States.

The petitioner also submitted evidence that the beneficiary played on [REDACTED] at the [REDACTED]. The evidence indicates that this team won the "Mike Francis Memorial Cup" and the "Rocky Mountain Cup." The petitioner did not submit evidence to establish the significance of these tournaments. 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)).

Based on the evidence submitted, it appears that membership on the winning team at the [REDACTED] [REDACTED] is a significant achievement for an amateur polo player. As discussed above, the petitioner has submitted testimonial evidence from [REDACTED] denying that the beneficiary could have even participated in a USPA event as a player. He has clearly done so, and has received one award which may qualify under this criterion.

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 as a polo player and as a result, this petition may not be approved. Accordingly, the appeal will be dismissed.

The AAO notes for the record that the only new evidence submitted on appeal includes the beneficiary's U.S. tax returns for several years, his most recent Form 1099, and evidence of payments he received from his brother, the P-1 athlete who serves as his employer under the terms of his P-1S petition. As this evidence relates to the beneficiary's maintenance of his prior status and his eligibility for an extension of that status, it will not be addressed in this decision. As noted above, the AAO does not have jurisdiction over an application for an extension of status filed on Form I-129.

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.