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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

[redacted]

D9

DATE: MAR 29 2012 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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 as an internationally-recognized 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). The petitioner, a sports club, seeks to employ the beneficiary as a wrestler for an indefinite period.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary as an individual athlete has achieved international recognition in his sport based on his own reputation; and (2) that the beneficiary is coming to the United States solely to participate in an event or events requiring the participation of an internationally recognized athlete. The director noted that the beneficiary must be solely competing in athletic competitions, not serving as an instructor at the petitioner's school or acting as a judge at certain competitions.

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, the petitioner asserts that it submitted substantial documentary evidence to establish the beneficiary's eligibility and contends that the supporting documentation was entirely ignored by the director.

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)(1)(ii)(A)(1) provides that a P-1 classification applies to an alien who is coming temporarily to the United States to perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

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 all petitions for P classification shall be accompanied by:

(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 ending 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. The Issue on Appeal- Internationally-Recognized Level of Performance

The issue in this matter is whether the petitioner has established that the beneficiary is an alien who performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(II) of the Act. To demonstrate that the beneficiary is an internationally recognized athlete, the petitioner must satisfy at least two of the evidentiary criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*).

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*) requires that the petitioner 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 a letter from [redacted] dated November 28, 2010. [redacted] advises that he has known the beneficiary for ten months and that they attend the same Taekwondo club. He notes that, " . . . [the beneficiary] is currently active in sports taekwondo and is currently competing, and has competed, in many Taekwondo events . . . he is a very promising athlete and has a great future in Taekwondo in this country." The letter is accompanied by a brochure featuring [redacted] as a gold medalist, sparring at Taekwondo Championships in Austin, Texas, July 3-5, 2009.

The director determined that the letter from [redacted] fails to state that the beneficiary is internationally recognized. The regulation at 8 C.F.R. § 214.2(p)(2)(iii)(B) provides that affidavits written by recognized experts "shall specifically describe the alien's recognition and ability or achievement in factual terms, and also set forth the expertise of the affiant and the manner in which the affiant acquired such information. Furthermore, the plain language of this evidentiary criterion requires that the evidence "detail how the alien . . . is internationally recognized."

Mr. Wallace states that he regards the beneficiary as an extraordinary talent, but he does not describe how the beneficiary's achievements are renowned, leading, or well-known in more than one country or conclude that the beneficiary is an internationally-recognized athlete based on his own reputation. Therefore, the AAO concludes that the petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*).

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*) requires the petitioner to submit evidence that the alien or team has received a significant honor or award in the sport. The petitioner submitted the following evidence that the beneficiary meets this criterion:

- A certificate dated March 15, 2003 for 3rd place in the Championship of the Uzbekistan Taekwondo Association Cup;

- A certificate dated 2004 for 3rd place in the Championship of the Republic of Uzbekistan in Taekwondo;

- Level III and level II diplomas from The Uzbekistan Taekwondo WTF Association awarded to the beneficiary November 23, 2007 and March 29, 2008 respectively;

- Two diplomas from the Open Championship of Samarkand Region by Taekwondo WTF among children and juniors devoted to "fourth year," dated in 2008.

As noted by the director, the evidence submitted by the petitioner does not indicate that the beneficiary has competed recently in competitions that convey national or international recognition to the medal winner. There is no evidence, for example, that any of the beneficiary's results were reported by the sports media in Uzbekistan or otherwise recognized beyond the context of the competition.

The petitioner also submitted an article describing the 5th WTF World Takewondo, Poomsae Championship held in Tashkent, Uzbekistan in October 2010. While the article descripts the event and indicates that 447 athletes from 59 countries participated in the event, it does not reference the beneficiary or indicate that he competed. A similar article from www.koreaherald.com detailing the event is included but it also fails to mention the beneficiary.

The petitioner also submitted several documents advertising various competitions including the Global Open, October 29, 2010 in Anaheim, California; New York Open TKD Championships held at [redacted] in October 2010; 2010 Gold Cup, National Taekwondo Championship held in October 2010 in Flushing, New York; 2011 PanAm Games. While these events appear to be national or international competitions, the petitioner did not provide evidence that the beneficiary participated or placed in any of these events. Most of the evidence submitted was in the form of general email invitations to participate that were sent to the petitioner without specific mention of the beneficiary. Furthermore, there is no evidence of any national or international recognition the beneficiary garnered as a result of his participation. 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 AAO cannot conclude that the beneficiary has received a significant honor or award in the sport. The petitioner has not submitted evidence to meet at least two of the regulatory criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*), and therefore has not established that the beneficiary is an internationally recognized athlete.

Finally, as the director noted, 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. See 8 C.F.R. § 214.2(p)(4)(ii). The petitioner states in the Form I-129 application that the beneficiary will be "training and participating

himself in US tournaments of behalf of the club, and training young athletes in the club." The petitioner has not established that the beneficiary will be competing in a specific itinerary of international or nationally recognized events. The intended category does not permit the beneficiary to enter the United States in order to train youth competitors.

III. Conclusion

In summary, as discussed above, 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 martial arts athlete. In addition, the petitioner has failed to establish that the beneficiary would be coming to the United States solely for the purpose of competing in athletic competitions. *See* section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(1).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.