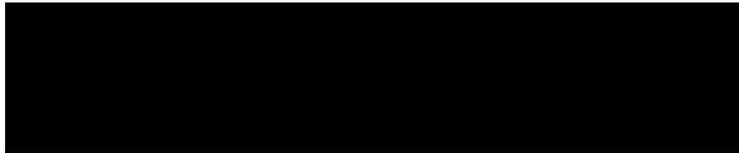




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D 1

FILE: EAC 03 233 53239 Office: VERMONT SERVICE CENTER

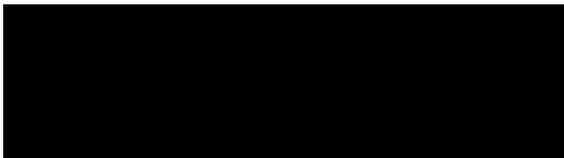
Date: AUG 07 2005

IN RE: Petitioner:
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:



PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a nonprofit tax-exempt organization that was founded in 2001. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1 classification of the beneficiary 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).¹ The petitioner seeks to employ the beneficiary temporarily as a soccer coach/academy director for a five-year period.²

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualified for P-1S (essential support personnel) classification. The director determined that the petitioner had not established that the beneficiary was an integral part of a principal P-1 athlete's performance.

The director noted that the petitioner filed for the beneficiary in the P1-A classification even though it was an inappropriate classification for a coach. The director stated that to qualify in the P-1S classification (essential support personnel), the petitioner must establish that the beneficiary, as support personnel, is essential to the successful performance of services of the principal athlete(s)' performance because he performs services that cannot be readily performed by a United States worker, and that the beneficiary has the requisite prior experience with the principal athlete(s).

On appeal, counsel for the petitioner asserts that the beneficiary is currently coaching one P-1 athlete, and that the petitioner was negotiating to contract with at least four additional aliens.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The regulation at 8 C.F.R. § 214.2(p)(3), provides the following definition:

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.

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

- (A) *General.* An essential support alien as defined in paragraph (p)(3) of this section 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.

¹ On the Form I-129 petition, the petitioner indicated that it was seeking a change in previously approved employment and an extension of the beneficiary's stay.

² Petitions for essential support personnel to P-1, P-2, and P-3 aliens may not exceed one year. 8 C.F.R. § 214.2(p)(8)(iii)(E).

(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 from 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 petitioner submitted a signed written contract between the beneficiary and the petitioner/employer.

The petitioner noted that CIS approved a petition that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In response to the director's request for additional evidence, the petitioner submitted a letter dated January 15, 2002, written by Francisco Marcos, A-League Commissioner, United Soccer Leagues, stating that the beneficiary is "a critical component of Mass Pro Soccer's success."³ The petitioner also submitted a letter dated December 7, 2003, written by Paul Baber, Assistant General Manager of the Cape Cod Crusaders, which states that the beneficiary "has played an essential role in the success of both the Cape Cod Crusaders and Mass Premier Soccer."

According to the petitioner's website, the petitioning organization, Massachusetts Premier Soccer, Inc., is comprised of the Boston Renegades W-League franchises, the Cape Cod Crusaders PDL franchise and the MPS Youth Development Academy. The Academy consists of camps, clinics, the school of Excellence Program and the Super Y League Program. *See* www.mpsbr.com [accessed on 7/14/2005].

The regulation requires that the petitioner establish that the beneficiary is essential to the successful performance of services of the principal (P-1, P-2 or P-3) alien or aliens because he performs services that cannot be readily performed by an United States worker. The petitioner has not met his burden of proof. The petitioner submit evidence indicating that the beneficiary is essential to the petitioning organization, rather than to the principal alien(s).

³ According to the evidence on the record, the petitioning organization, now known as Massachusetts Premier Soccer, Inc., was formerly known as Massachusetts Professional Soccer, Inc.

In review, the evidence is insufficient to establish that the beneficiary is essential to the performance of the principal athlete. The assertions of counsel and of the petitioner are not persuasive.

The petitioner failed to establish that the beneficiary has the requisite prior experience with the principal athlete. On appeal, counsel for the petitioner asserts that the beneficiary has been coaching P-1 athlete, Methembe Ndlovu, but there is nothing in the record to establish this. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted a copy of an approval notice for Mr. Ndlovu and a contract between Mr. Ndlovu and the Cape Cod Crusaders. According to the petitioner's website, the beneficiary is currently the U14 Head Coach for the Boston Renegades. Mr. Ndlovu's name does not appear on the U14 Boston Renegades' roster, and there is no other evidence establishing that the beneficiary coaches him.

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.