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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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APR 21 2005



FILE: SRC 03 071 50543 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the nonimmigrant visa petition in a decision dated March 19, 2020. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a marketing and talent management company that seeks to employ the beneficiary as a professional body boarder for a period of three years at an undetermined salary. The director denied the petition, finding that the petitioner failed to establish that the beneficiary satisfied the regulatory standard for an alien with extraordinary ability in athletics.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is “at the very top” of his field as required by the regulation at 8 C.F.R. § 214.2(o)(3)(ii) or that he had the requisite “sustained acclaim” in the field of body boarding required by the statute.

On appeal, counsel for the petitioner asserts that the director erred in failing to grant the petitioner’s request to amend the petition from an O-1 to a P-1 classification. Counsel further asserts that the beneficiary satisfies the P-1 nonimmigrant criteria.

In response to the director’s request for additional evidence, the petitioner asked the director to permit the petitioner to amend the instant petition from O-1 to P-1 classification. There is no provision in the statute or regulations that allow Citizenship and Immigration Services to permit petitioners to amend the classification in the nonimmigrant visa petition. On appeal, the petitioner again asserts that it should be allowed to amend the petition from O-1 to P-1 classification. Counsel for the petitioner states that CIS has previously granted such a request for amendment; therefore, it is within CIS’ discretion to allow an amendment in the instant case. Counsel cites to a non-precedent Texas Service Center decision.

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).

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

The petitioner failed to address specifically the grounds for denial set forth in the decision of the director, i.e., that the beneficiary does not meet the criteria for O-1 classification.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.