

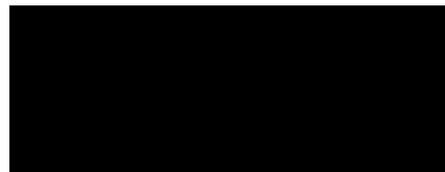
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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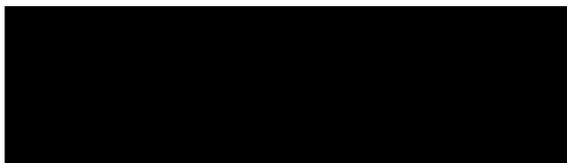


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2011

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

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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is self-described as an organizer of worldwide pool competitions and the beneficiary is a professional pool player. The petitioner filed this petition seeking to extend the beneficiary's status as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of extraordinary ability in athletics.

The director denied the petition on April 21, 2010 on the sole grounds that the petitioner failed to establish that it qualifies as a United States agent pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(I), which specifies the evidentiary requirements for "an agent performing the function of an employer." Specifically, the director found that the submitted contract between the petitioner and beneficiary "fails to specify any remuneration that the beneficiary will receive."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the petitioner is "acting as an agent for [the beneficiary] for purposes of immigration," and also serves as the promoter for the "Artistic Pool Tour" outlined in the submitted itinerary. With respect to the director's finding that the petitioner's contract with the beneficiary does not specify the remuneration the beneficiary will receive, the petitioner clarifies that "it is customary and usual that all participants in our tournaments do not receive monetary compensation or a stipend, other than the prize money." The petitioner indicates that it "cannot predict nor state his remuneration for the next three years."

For the reasons discussed below, the AAO will withdraw the director's decision and approve the petition. The petitioner has adequately explained the terms and conditions of the beneficiary's participation in its series of events and meets the requirements set forth at 8 C.F.R. § 214.2(o)(2)(iv)(E)(I). We emphasize, however, that approval of this petition authorizes the beneficiary's participation only in the specific events outlined in the itinerary provided by the petitioner.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of 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 . . . 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 regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

An O-1 petition "may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent." 8 C.F.R. § 214.2(o)(2)(i). The regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

- (A) The evidence specified in the particular section 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 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 advisory opinion(s) from the appropriate consulting entity or entities.

Finally, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) imposes the following requirements on petitions filed by United States agents:

Agents as petitioners. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
- (2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

- (3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the act and 8 CFR part 274a.

II. Discussion

The sole issue addressed by the director is whether the petitioner qualifies as a United States employer or agent pursuant to 8 C.F.R. § 214.2(o)(2)(i). The director determined that the petitioner, filing in the capacity of "an agent performing the function of an employer," failed to fully comply with the regulatory requirements pertaining to such agents at 8 C.F.R. § 214.2(o)(2)(iv)(E)(I).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 10, 2010. On the O and P Classification supplement to Form I-129, the petitioner described the beneficiary's proposed duties as a professional pool player as follows:

Beneficiary will act as ambassador and competitor at world class events organized by [the petitioner] as scheduled throughout the next three years. Will also participate in related promotional activities such as interviews with electronic and print media as required.

The petitioner did not specify the beneficiary's weekly or annual wages on the Form I-129, but stated that he would receive "other compensation" in the form of "travel, hotels and per diem."

The petitioner initially submitted a copy of its "Agency Contract" with the beneficiary, executed in February 2008. The contract indicates that the petitioner "would like [the beneficiary] to come to USA as an Ambassador and Competitor at the World Class events organized by [the petitioner] as they are scheduled throughout the year." The petitioner did not submit an itinerary at the time of filing.

The director issued a request for additional evidence ("RFE") on February 24, 2010, in which she requested, *inter alia*, the following: (1) a contract between the petitioner and beneficiary that specifies the beneficiary's duties, duration of engagement, pay and required events; and (2) an itinerary with the dates and locations of work for the requested approval period.

In response, the petitioner submitted an updated agency agreement which indicates that the beneficiary will play in the petitioner's "World Class" events in 2010, 2011 and 2012, and serve as a Special Ambassador and key promotions player for [REDACTED]. The petitioner stated that its [REDACTED] will include the following events:

Stop #1: May 16-22 to be held in conjunction with the BCAPL National Championships at the Riviera Hotel and Casino, Las Vegas, NV

Stop #2: May 28-June 4 to be held in conjunction with the VNEA International Championships at the Riviera Hotel and Casino, Las Vegas, NV

Stop #3: June 6 – June 11 to be held in conjunction with the ACS National Championships at the Riviera Hotel and Casino, Las Vegas, NV

Stop #4: August 19 – August 28 to be held in conjunction with the APA National Championships at the Riviera Hotel and Casino, Las Vegas, NV

The fifth and final tour stop for 2010 will [REDACTED] confirmed for December 2 – December 5 at Side Pockets in St. Charles, MO.

The agreement indicates that the 2011 and 2012 tours would include the same five events, with possibly one or two additional tour stops, on approximately the same dates.

The director denied the petition on April 21, 2010, concluding that the petitioner failed to meet the regulatory requirements for an employer acting as an agent pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(1). Pursuant to this regulation, an agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

The director observed that, based on the agreement submitted, it appears that the petitioner is an agent who will serve as the beneficiary's "employer," as the petitioner seeks to have the beneficiary serve as a competitor in the events that it organizes and to serve as an "ambassador" under the terms of the agency agreement. The director further noted that the petitioner indicated on the Form I-129 that the beneficiary will receive compensation in the form of *per diem*, travel and accommodation. However, the director ultimately denied the petition because the agreement submitted in response to the RFE "fails to specify any remuneration or wages that the beneficiary will receive."

On appeal, counsel for the petitioner asserts that the petitioner, as a promoter of pool tournaments, "is not an 'employer' but rather is acting as an 'agent' for immigration purposes and thus there is no direct compensation from the petitioner to the beneficiary." Counsel indicates that the beneficiary's only monetary compensation will be in the form of prize money if he wins the events listed in the itinerary. Counsel asserts that "the instant situation mirrors a petition for any sports professional competing on an organized tour/competition such as the PGA (Professional Golf Association) tour or the WTC (World Tennis Circuit)." Counsel states that "these organizations petition for their members who compete on these tours and there are no 'wages' or compensation other than prize money."

The petitioner submits a letter dated April 28, 2010, clarifying that "it is customary and usual that participants in our tournaments do not receive monetary compensation or a stipend, other than the prize money." The petitioner notes that, while the beneficiary's earnings as a result of tournament victories are expected to be

substantial, "those very earnings could not have been declared as remuneration before the actual competitions."

Counsel for the petitioner also submits a letter in which he clarifies that the inclusion of "per diem, travels & hotels" as "other compensation" on the Form I-129 Petition was an error on the part of his office and does not reflect the arrangement between the petitioner and beneficiary.

Upon review, we will withdraw the director's decision and approve the petition. The petitioner has provided a copy of its written contract with the beneficiary, and provided the required itinerary of events in which he will participate for the petitioner in the area of his extraordinary ability. The petitioner has also adequately explained the terms and conditions of employment. The beneficiary, as a professional pool athlete, falls into that class of "workers who are traditionally self-employed." *See* 8 C.F.R. § 214.2(o)(2)(iv)(E). While the petitioner does not consider itself to be the beneficiary's "employer," it can be categorized as "an agent performing the function of an employer" for the purposes of this visa petition. The petitioner has clarified that the beneficiary will compete for prize money in the events that it organizes and will not receive any guaranteed wages or compensation, as is the case in many sports. The fact that the petitioner will not pay the beneficiary a "wage" *per se* does not prohibit the petitioner from filing the petition.

Accordingly, we will withdraw the director's decision and approve the petition. Under the approved petition, the beneficiary is authorized to compete in events organized by the petitioning organization during the requested period of employment.

We emphasize, however, that the approval of this petition does not authorize the beneficiary's participation in events organized by other promoters, associations, leagues or other organizations during the requested validity period. For example, the petitioner's itinerary indicates that [REDACTED] are held "in conjunction with" BCAPL, VNEA, ACS and APA national and international championship events. The evidence of record also indicates that the beneficiary is a member of these organizations and has regularly competed in events sponsored by these organizations in the past.

Pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) a person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of events, the dates of each service or engagement, the names and addresses of the actual employers and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is also required. Although the petitioner identifies itself as the beneficiary's "agent for immigration purposes," it has clearly not satisfied the regulatory requirements to file the petition on behalf of the beneficiary and multiple employers. The submitted itinerary lists only those events that are sponsored by the petitioning organization, and no contracts between the beneficiary and any other promoters or organizations have been provided. Furthermore, the petitioner has not submitted evidence to establish that it is authorized to act as an agent for any other pool organizations, promoters or associations for the purposes of filing this petition.

Therefore, the validity of this petition is limited to the qualifying events specifically listed in the petitioner's itinerary and any other comparable events or tournaments that may be added to the petitioner's own [REDACTED] Pursuant to 8 C.F.R. § 214.1(e), a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 214(a)(2)(A) of the Act.

The director cited no other grounds for denying the petition, and upon *de novo* review, the AAO sees no additional basis for denial. Accordingly, the AAO will withdraw the director's decision dated April 21, 2010 and approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, the petitioner has met its burden of proof.

ORDER: The appeal is sustained.