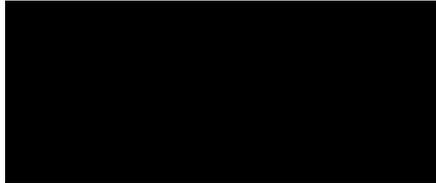


**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



D9

FILE: SRC 05 163 50684 Office: TEXAS SERVICE CENTER Date: **DEC 13 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:



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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act) for a period of three years. The petitioner seeks to employ the beneficiary temporarily in the United States as a horseman in its horse riding and training business.

The director denied the petition, finding that the petitioner had failed to submit a written consultation.

On appeal, counsel for the petitioner submits a statement and resubmits evidence it previously provided to Citizenship and Immigration Services (CIS).

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) of the Act, 8 U.S.C. § 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) 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, and
- (ii) seeks 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)(i) provides for P-1 classification of an alien:

*General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country 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 a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team...

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides for P-1 classification of an alien:

- (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete 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; and

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.

The regulation at 8 C.F.R. § 214.2(p)(3) states that:

*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)(i)(A) provides, in pertinent part, that:

*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)(4)(ii) sets forth the criteria and 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 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 a major U.S. sports league or 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.

The regulation at 8 C.F.R. § 214.2(p)(7)(i) requires, in pertinent part:

(A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

\* \* \*

(F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

In a request for additional evidence (RFE) dated June 2, 2005, the director requested that the petitioner submit a valid labor organization consultation and a copy of the itinerary for the events/activities. In response to the RFE, the petitioner submitted a letter of support from [REDACTED] VP Operations/CFO, [REDACTED]

The director determined and the AAO concurs that the letter from [REDACTED] does not satisfy the requirements of a written consultation.

On appeal, counsel for the petitioner asserts there is no labor organization in the beneficiary's field of endeavor. The petitioner bears the burden of proof of establishing that there is no labor organization in the beneficiary's field of endeavor. 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)). 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 has neither submitted a consultation nor established that an appropriate labor organization does not exist in accordance with 8 C.F.R. § 214.2(p)(7)(i).

Beyond the director's decision, the petitioner has not established that the beneficiary is an internationally recognized athlete and that the beneficiary is coming to the United States to compete at an internationally recognized level as required by 8 C.F.R. § 214.2(p)(1)(ii)(A).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.