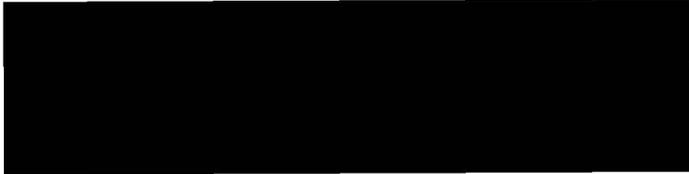


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U.S. Citizenship
and Immigration
Services



DA

FILE: SRC 05 204 50594 Office: TEXAS SERVICE CENTER Date: **OCT 13 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, 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 is a sports agency, which seeks classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of five months. The petitioner seeks to employ the beneficiary temporarily in the United States as a polo trainer and coach for a professional polo player.

The director determined that the petitioner failed to establish that the beneficiary met the regulatory criteria for P-1 classification as an essential support alien.

On appeal, counsel submits a brief and copies of documents submitted below.

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.

Aliens who provide essential support to P-1 athletes may also receive classification under section 101(a)(15)(P)(i) of the Act pursuant to the regulation at 8 C.F.R. § 214.2(p)(4)(iv), which states:

P-1 classification as an essential support alien. (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.

(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 regulation at 8 C.F.R. § 214.2(p)(3) further prescribes, in pertinent part:

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.

In this case, the director denied the petition because the record did not establish the beneficiary's prior essentiality, critical skills and experience with the principal alien and because the petitioner did not submit a consultation letter from a labor organization with expertise in the alien's field. On appeal, counsel contends that the petitioner submitted sufficient evidence of the beneficiary's prior essentiality, critical skills and experience with the principal alien and that the letter from a member of the United States Polo Association (USPA) met the regulatory consultation requirements. Counsel further claims that the director went beyond the regulations by noting that the beneficiary trained the principal alien while authorized as a P-1 essential support alien for another P-1 athlete. Counsel's claims fail to overcome the grounds for denial and the appeal will be dismissed.

1. Prior Essentiality, Critical Skills and Experience with the Principal Alien

Although the record indicates that the beneficiary has previously worked with an unspecified number of other polo players, the petitioner failed to establish that the beneficiary has critical knowledge of the specific services to be performed and experience in providing such support to the principal alien in this case, [REDACTED] as required by the regulation at 8 C.F.R. § 214.2(p)(3). The letters of the petitioner, [REDACTED] and [REDACTED] Handicap Chairman of the USPA Florida-Caribbean Circuit, all fail to sufficiently describe the beneficiary's prior essentiality, critical skills and experience with [REDACTED] specifically, as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2).

The petitioner submitted a copy of an article from the January 2004 edition of *Polo Players' Edition*, USPA's official monthly publication. The article discusses the benefits to polo players of working with personal trainers and discusses the beneficiary's experience working with polo players. The article indicates that the beneficiary began working with [REDACTED] in the Fall of 2003, during a break in [REDACTED] competitive seasons. The article states: [REDACTED] is hoping, with [the beneficiary's] help, that he will be able to maintain or even improve his fitness during the down time." The article notes that the beneficiary also helped [REDACTED] "eat smarter" and remarks, "According to [REDACTED] he sees a big difference in his fitness level already and is sure he will be ready to go once his horses are back up." The record contains no documentary evidence that the beneficiary continued to train [REDACTED] for specific competitions or at any time during his ensuing competitive seasons.

In its July 14, 2005 support letter, the petitioner asserts that the beneficiary “has been an integral part of [redacted]’s rise to stardom and continued success as a polo player. Throughout the years he has . . . assisted [redacted] at the important tournaments around the world[.]” The petitioner further states that “[d]uring the past several years, [the beneficiary] has been an important and vital part of [redacted]’s personal fitness training, preparation and maintenance.” The petitioner provides no details regarding the dates of the beneficiary’s service to [redacted] or the specific tournaments at which he assisted [redacted] and the petitioner does not explain in any probative detail how the beneficiary’s critical skills have been essential to [redacted]’s successful performance.

In his July 12, 2005 letter [redacted] himself provides even less information about the beneficiary’s work with him. [redacted] simply states that the beneficiary:

has years of experience with the best players and teams in high-goal polo, and his services as a trainer/coach are essential to the success of players like myself. Due to [the beneficiary’s] years of experience as my personal and team trainer, he has gained critical knowledge of the specific needs of polo players in order to perform at their best. He is essential to my successful performance as a high goal polo player.

[redacted] does not specify when the beneficiary began working with him, does not identify any tournaments at which the beneficiary assisted him, and does not explain what critical knowledge the beneficiary possesses regarding [redacted]’s own, specific needs to perform successfully, as opposed to the needs of other polo players with whom the beneficiary previously worked.

In his July 13, 2005 letter, [redacted] of the USPA, also fails to provide probative details regarding the beneficiary’s work with [redacted]. Rather, [redacted] generally states that the beneficiary has been “an integral part” of [redacted]’s performance in “top international tournaments” and has “gained critical knowledge of the specific training and preparation needs of a professional polo player through his years of experience with [redacted] and his teammates.” [redacted] does not specify the length of the beneficiary’s work with [redacted], and fails to describe how the beneficiary’s expertise has been essential to the successful performance of [redacted], specifically, as opposed to other polo players.

In her decision, the director noted that the beneficiary provided some training to [redacted] while the beneficiary was working in the United States as an essential support alien for another P-1 athlete. On appeal, counsel claims that this fact was the “true rationale for denying the petition” and that the director’s decision “has no basis in law in so far as it goes beyond the criteria expounded in the regulation and imposes the Director’s own subjective requirement for eligibility.” We find no error in the director’s comment. Rather than imposing a requirement outside of the regulation, the director explained that the evidence did not identify the dates of the beneficiary’s past work with [redacted] and that the record only showed that the beneficiary briefly trained [redacted] during his off-season while the beneficiary was employed as an essential support alien for another athlete. Hence, the record did not establish the beneficiary’s prior essentiality with [redacted].

We concur with the director's determination. The general statements of the petitioner, [REDACTED] and [REDACTED] all fail to sufficiently describe the beneficiary's prior essentiality, critical skills, and experience with [REDACTED] as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). The record also fails to establish that the beneficiary meets the regulatory definition of an essential support alien at 8 C.F.R. § 214.2(p)(3).

2. Consultation

The regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(1) requires a consultation from a labor organization with expertise in the area of the essential support alien's skill. The regulation at 8 C.F.R. § 214.2(p)(7) further explicates the consultation requirement and states, in pertinent part:

(vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

(vii) *Labor organizations agreeing to provide consultations.* The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations. The Service will also list in its Operations Instructions those occupations or fields of endeavor where it has been determined by the Service that no appropriate labor organization exists.

The petitioner submitted [REDACTED]'s letter as a consultation. The director stated that [REDACTED] is not authorized to provide consultations. On appeal, counsel claims that [REDACTED] letter meets the regulatory requirements for a consultation. We concur with the director's determination that [REDACTED] letter does not meet the regulatory consultation requirements for essential support aliens. The petitioner submitted a printout from the USPA website which explains that the USPA is the governing body of the sport and makes the rules, issues handicaps, sponsors tournaments, and provides communication for the sport of polo in the United States. The printout establishes that USPA is an appropriate organization to provide a consultation, but the evidence does not establish [REDACTED] authority to provide consultations on behalf of USPA. [REDACTED] identifies himself as "Handicap Chairman[,] Florida – Carribean [sic] Circuit" of the USPA. However, the record does not show that [REDACTED] served on the USPA Board or held a similarly authoritative position of leadership within the USPA at the time he wrote his letter in support of the beneficiary.

In addition, [REDACTED] fails to evaluate the beneficiary's essentiality to and working relationship with [REDACTED] in any probative detail, as required by the regulation at 8 C.F.R. § 214.2(p)(7)(vi). As noted in the preceding section, [REDACTED] discusses the beneficiary's work with [REDACTED] in general terms and fails to provide any details regarding the date and duration of the beneficiary's past work for [REDACTED]. For example, [REDACTED] does not identify a single one of the "top international tournaments" at which the beneficiary was allegedly an "integral part" of [REDACTED] performance and the record is devoid of any corroborative evidence of the beneficiary's past essential services to [REDACTED] at any tournaments or during any competitive seasons preceding the filing of this petition. Accordingly, [REDACTED]'s letter fails to provide the requisite consultation pursuant to the regulation at 8 C.F.R. § 214.2(p)(7)(vi).

The petitioner failed to establish that the beneficiary has critical knowledge of the specific services to be performed for, and his experience in providing such support to, the principal P-1 athlete as required by the regulation at 8 C.F.R. § 214.2(p)(3). The support letters also fail to sufficiently describe the beneficiary's prior essentiality, critical skills and experience with [REDACTED] as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). In addition, the petitioner failed to meet the consultation requirement for an essential support alien prescribed by the regulation at 8 C.F.R. § 214.2(p)(7)(vi). Accordingly, the petitioner has not established that the beneficiary qualifies for classification under section 101(a)(15)(P)(i) of the Act as an essential support alien for the principal athlete.

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.