

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

Dg

**PUBLIC COPY**



FILE: WAC 07 073 52093 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner:  
Beneficiary:

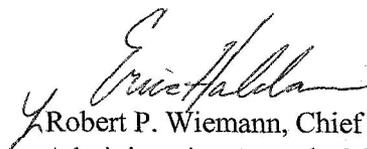


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

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, California 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 Taekwondo school engaged in student instruction that seeks to classify 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 years. The petitioner seeks to employ the beneficiary temporarily in the United States as a Taekwondo athlete/instructor.

The director denied the petition, finding that the beneficiary would serve solely as a coach or instructor, and not as an athlete coming to the United States solely for the purpose of competing in a specific athletic competition requiring the participation of an internationally recognized athlete, as required by the regulations. Consequently, the director concluded that the beneficiary was not eligible for P-1 classification.

The petitioner, through counsel, submits a timely appeal with a brief.

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) states, in pertinent part:

- (i) *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 . . . .

Additionally, the regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides that a P-1 classification applies to an alien who is coming temporarily to the United States :

- (1) To perform at a specific athletic competition, individually or as part of a group or team, at an internationally recognized level of performance; or
- (2) To perform with, or as an integral and essential part of the performance of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and

who has a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.

Since the petitioner claims that the beneficiary is coming to the United States as an athlete, the provisions set forth in 8 C.F.R. § 214.2(p)(1)(ii)(A)(I) apply for purposes of this analysis.

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

*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)(3) further states, in pertinent part:

*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)(ii) sets forth the 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 athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the 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 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 issue in this matter is whether the beneficiary, as a Taekwondo coach or instructor, is eligible for P-1 nonimmigrant visa classification.

The director found the initial evidence submitted with the petition insufficient to warrant approval. Consequently, a request for evidence was issued on January 22, 2007, which required the petitioner to submit evidence demonstrating the beneficiary's eligibility for P-1 classification. In a response received on March 12, 2007, the petitioner submitted documentation of the beneficiary's international recognition in Taekwondo, but failed to establish that she would be participating in an athletic competition in the United States which has a distinguished reputation. Instead, the documentation submitted indicated that the beneficiary would primarily be engaged in Taekwondo instruction. For example, a letter dated February 28, 2007 by [REDACTED] of the American Taekwondo Association stated as follows:

[The beneficiary's] certified instructor status will help to facilitate the owners and operators of the American Taekwondo Association schools here in the United States. Because of the unique talents which [the beneficiary] has acquired and the many years of dedication that is required to become a Certified Instructor, she has what is needed to successfully teach and instruct a martial arts operation. The owners of our most successful schools in the country have people with the qualities.

Moreover, the contract representing the agreement between the petitioner and the beneficiary likewise indicated that the beneficiary would be primarily engaged in Taekwondo instruction. Section 4 of the agreement states as follows:

[The petitioner] agrees to compensate the beneficiary for her services as a Taekwondo athlete/instructor by paying her a salary of \$24,000 annually for her first year's service. After [the beneficiary's] first year of service is completed, [the beneficiary] will be paid an additional amount of \$25.00 for each new student she enrolls for [the petitioner's] Taekwondo school.

It is noted that the agreement omits discussion of appearances or required participation in athletic competitions, events or engagements while in the United States.

On March 15, 2007, the director denied the petition. The director noted that based on the evidence of record, the beneficiary would primarily be acting as a coach or instructor for the petitioner's Taekwondo school. The director concluded that she was ineligible for this classification, because P-1 classification, as contemplated by the regulations, is not intended for coaches or instructors.

On appeal, counsel for the petitioner contends that the director's decision was erroneous. Counsel claims that the director's conclusion that the beneficiary will be a full-time instructor, with her athletic activities being ancillary, is incorrect. Counsel contends that since such athletes earn no prize money for competitions, they must instruct other athletes to maintain a source of income. Moreover, counsel claims that the beneficiary could not perform the instruction without being an athlete herself, unlike other coaches in, for example, the National Football League or the National Basketball Association. Finally, counsel concludes that he has been filing similar petitions for Taekwondo athletes for fifteen years and had not received denials based on this issue in the past.

Upon review, counsel assertions are not persuasive. The P-1 nonimmigrant classification is limited to internationally recognized athletes who are coming to the United States to perform solely as competitive athletes.

The AAO notes that in other nonimmigrant categories, Citizenship and Immigration Services (CIS) consistently makes a distinction between athletes and coaches, *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002)(noting that legacy INS had explicitly stated that the "area" of athletics should not be considered as a whole to include every occupation involving athletics). The P nonimmigrant category itself distinguishes between athletes and coaches by providing two different classifications: P-1 for athletes and P-3 for support personnel, including coaches.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) provides for the classification of an essential support alien who is an integral part of the performance of a P-1 athlete or athletic team. While P-1 classification is available to coaches who qualify as essential support aliens, the petitioner does not assert, nor does the record demonstrate, that the beneficiary would be coming to the United States as an essential support worker accompanying a P-1 athlete or athletes. The petitioner did not seek to classify the beneficiary as an essential support alien.

The beneficiary's proposed position as an instructor at the petitioner's Taekwondo school does not demonstrate that she will be coming to perform as an athlete at an internationally recognized level of competition, nor does it demonstrate that she will be coming to perform as a P-1 nonimmigrant coach because

she will not be working in a support relationship with an individual P-1 athlete or P-1 athletic team. 8 C.F.R. § 214.2(p)(4)(iv). There is no provision that would allow an alien to come individually as a P-1 coach, other than as a P-1 essential support alien.

Therefore, the AAO concurs with the director's conclusion that the P-1 classification is not available to the beneficiary based on the evidence in the record. On appeal, counsel has failed to overcome the basis for the director's denial in that he has failed to submit evidence that the beneficiary will be performing in a specific athletic competition at an internationally recognized level of performance. The record, however, contains ample evidence that the beneficiary would provide Taekwondo instruction to students at the petitioner's school during her five year stay in the United States.

Finally, counsel for the petitioner noted that CIS approved other petitions that had been previously filed on behalf of Taekwondo instructors. It must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approval would constitute material and gross 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). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act.

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 other beneficiaries under similar circumstances, 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).

Based upon the above discussion, the beneficiary is not eligible for the classification sought. 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.