

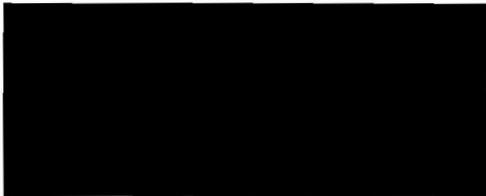


U.S. Citizenship
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Services

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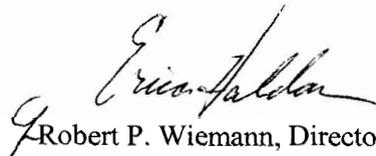
FILE: WAC 07 091 51730 Office: CALIFORNIA SERVICE CENTER Date: **AUG 27 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition in a decision dated January 5, 2007. The petitioner appealed the director's decision to deny the petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a thoroughbred horse ranch. 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), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of one year. The petitioner seeks to employ the beneficiary temporarily in the United States as essential support personnel, namely, as a professional horse trainer.

The director denied the petitioner, finding that the petitioner failed to establish that it has filed a petition on behalf of a P-1 athlete to whom the beneficiary would provide essential support services.

The regulation at 8 C.F.R. 214.2(p)(4)(iv)(A) provides that an essential support alien 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.

Moreover, the regulation at 8 C.F.R. 214.2(p)(4)(iv)(B) provides that a P-1 petition for an essential support alien 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.

In this matter, the director noted that while the evidence demonstrated that the beneficiary had experience with a top, internationally-ranked polo player, the beneficiary was not currently associated with such a P-1 athlete. The director issued a request for evidence on February 14, 2007, in which the petitioner was requested to provide documentation to demonstrate that such a relationship existed. In response, however, counsel for the petitioner contended that the beneficiary was no longer associated with the P-1 athlete discussed in the initial evidence, and suggested that such a relationship might arise in the future.

On appeal, counsel for the petitioner requested a thirty day extension to file a brief and additional evidence as a result of personal family issues and a backlog of work as a solo practitioner. At the end of the thirty day period, counsel filed a second extension request, and was granted an additional ten days in which to submit her brief in support of the appeal. On July 9, 2007, counsel submitted a motion to reopen, and claimed:

The request for reopening so that all the evidence can be properly submitted and considered by the Department. Simply put, the denial of the petition was made weeks prior to the deadline for submitting evidence requested by the Department. The parties had just resubmitted what had

been lost by the Department. It was clear from the request that the Department assumed the Petition was being submitted by the same former employer, Adolfo Cambiaso, and not the highly regarded [petitioner].

Moreover, the request is made because the circumstances in my life denied the parties the effective assistance of counsel and consequently, due process. All told, the request is not made for delay, but so that justice may be done and constitutional mandates followed.

In addition, counsel's motion was accompanied by sixteen exhibits. However, upon review, none of the documentation submitted with the appeal pertains to the specific deficiencies noted by the director in the denial. It is concluded that counsel's brief statement and supporting documentation fails to adequately address the director's conclusions. The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. In fact, it is noted that in counsel's first extension request dated May 29, 2007, she claims that contrary to the petition and the supporting documentation filed with it, the application was actually meant to be a request for P-1 classification and not P-1S, as maintained prior to adjudication. It should be noted, however, that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Counsel's general statements on appeal, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Counsel does not address the reason for the director's denial of the petition, and merely claims that CIS must have thought the petition was filed by the beneficiary's former employer. This statement is without merit and provides no insight on the intended reason for the filing of the appeal.

A review of the record clearly indicates that the petitioner failed to meet its burden of proof in this proceeding. The record clearly indicates, and the petitioner conceded in response to the request for evidence, that the athlete for whom the beneficiary worked and from whom her former expertise was gained is no longer associated with her. Contending that a principal P-1 athlete may eventually require the beneficiary's services is likewise insufficient to establish the beneficiary's eligibility for P-1S status. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Again, the regulation at 8 C.F.R. § 214.2(p)(3) states:

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.

Here, the petitioner has failed to establish that such a relationship currently exists between the beneficiary and the P-1 alien. Moreover, counsel on appeal makes no attempt to contradict the director's conclusions or clarify any mistakes the director may have made.

The petitioner was afforded the opportunity to provide requested evidence in support of the beneficiary's eligibility in response to the request for evidence, and again on appeal, yet failed to do so. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

As stated above, absent a clear statement, brief and/or evidence to the contrary, counsel for the petitioner does not identify, specifically, an erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.