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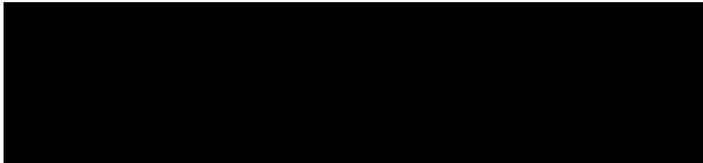
FILE: WAC 06 256 51370 Office: CALIFORNIA SERVICE CENTER Date: **MAY 30 2008**

IN RE: Petitioner:
Beneficiary:

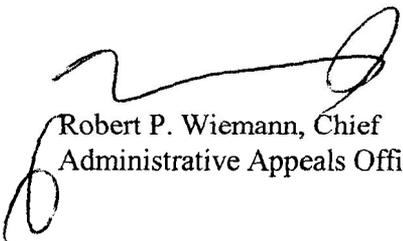


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

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 youth soccer club. It filed this nonimmigrant petition seeking 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), as an internationally recognized athlete. The petitioner seeks to employ the beneficiary as director of coaching for a period of five years.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary as an internationally recognized athlete competing in a specific event or events or as a member of an athletic team. The director observed that the petitioner seeks to employ the beneficiary principally as a soccer coach and that competition would be ancillary to his primary job duties. The director noted that P-1 classification is not available to aliens seeking employment as coaches or instructors at an academy or school devoted to the sport.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the director placed "an extremely restrictive meaning on words that are neither restrictive nor have been interpreted previously as restrictive." Counsel argues that coaches are athletes who are integral to teams and groups of competitors. Counsel further argues that the phrase "relating to athletes," found in the statute at section 101(a)(15)(P)(i)(a) was intended to expand the P-1 classification beyond those competing as athletes. Counsel submits a brief and additional evidence in support of the appeal.

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

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

Competition, event, or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. . . .

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 sole issue addressed by the director is whether the beneficiary, who would be employed as director of coaching for a youth soccer club, seeks admission to the United States solely for the purpose of performing as an internationally recognized athlete with respect to a specific athletic competition.

The petitioner operates a soccer club providing youth recreational and competitive soccer programs at every age level. In a letter dated June 19, 2006, the petitioner stated that the beneficiary would perform the following duties:

The Director of Coaching meets with the coaches at various levels of coaching capability to improve their ability as coaches in the sport. The Director of Coaching trains coaches with the supervisory skills necessary for standard and nonstandard player drills, play configurations and varieties of tactical advice they can give their players and their teams. The Director of Coaching may also assist in the coaching of the most senior teams and senior players.

The director denied the petition on October 10, 2006, concluding that the petitioner had failed to establish that the beneficiary, as a coach, qualified for P-1 classification. The director explained as follows:

The alien does not seek admission solely to compete as an internationally recognized athlete at specific events. On review, the record establishes that the petitioner seeks to employ the beneficiary principally as a coach, and that competitions would be ancillary to his primary job duties.

After careful review of the record, it is determined that the petitioner has not established that the beneficiary is qualified under the P-1 classification.

First, an athlete having an internationally recognized reputation may be granted P-1 classification to perform at a single competition or event or for an athletic season or tour appropriate to the sport as an individual athlete or member of an athletic team. 8 C.F.R. § 214.2(p)(1). The petitioner in this case seeks to employ the beneficiary as an instructor or coach, not solely as an athlete competing in a specific event or events or member of an athletic team. P-1 classification is not available to aliens seeking employment as coaches or instructors or school devoted to the sport.

On appeal, counsel for the petitioner asserts that coaches should be considered athletes for the purposes of this visa classification. Counsel explains as follows:

This appeal is submitted because other Service Centers had in the past interpreted the phrase "relating to athletes" in 101(a)(15)(P)(i)(a) as inclusive of more than the athletes themselves. Moreover [section] 214(c)(4)(A) of the Act contemplates the athlete whether performing individually or part of a group or team in competitive soccer. One does not get to be a coach unless one is an athlete whether playing on the field or demonstrating to players as part of their coaching duty. Indeed in most sports no one can become a coach who was himself not a performer in the sport. Coaches are integral to teams and groups of competitors.

This decision places an extremely restrictive meaning on words that are neither restrictive nor have been interpreted previously as restrictive. Moreover, denying U.S. athletes the benefit of coaches of international caliber hampers the growth and victory of U.S. competitors for no justifiable reason.

* * *

We respectfully suggest that the words of the Statute "relating to" mean "an established, logical or causal connection between" (Webster's New Collegiate Dictionary) and "to have reference or relation or established social or sympathetic relationship with a person or thing" (Random House College Dictionary). In sum, the words "relating to" expand rather than restrict the statutory definition of P-1 since the words of the Statute are to be given full force and effect. In *Stone vs. INS*, I&NS [sic] 541 US 386 (1995), the Supreme Court held that "when Congress acts to amend the statute, we presume it intends its amendment to have real and substantial effect" and that "the Court must construe statute to give effect, if possible, to every provision." Had Congress intended to limit this category to athletes it would not have used the phrase "relating to" and limited the definition to "athletes." The Decision is in error as a matter of statutory construction.

Upon review, counsel's assertions are not persuasive. The evidence shows that the beneficiary would coach and train soccer coaches and youth soccer players at a soccer club rather than performing as an athlete at a specific athletic event or tournament. The AAO concurs with the director's determination that P-1

classification is not available to coaches. The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A)(I) applies to an athlete who is coming to perform "at a specific athletic competition . . . at an internationally recognized level or performance."

Counsel's argues that the director applied a "restrictive and cramped meaning" to the word "athlete" and misconstrued the words "relating to athletes" found at section 101(a)(15)(P) of the Act. Counsel asserts that "other Service Centers had in the past interpreted the phrase 'relating to athletes' . . . inclusive of more than the athletes themselves." Counsel provides no further explanation, evidence, or citations to precedent decisions to support this assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel's argument that the director misconstrued the statute by not expanding the term "athlete" to include a coach is also not persuasive. Section 101(a)(15)(P)(i)(a) of the Act refers to an alien who "is described in section 214(c)(4)(A) (*relating to athletes*), or (b) is described in section 214(c)(4)(B) (*relating to entertainment groups*)." (Emphasis added.) Here, the phrase "relating to athletes" was inserted solely as a reference to the section in the Act where the specific requirements for P-1 athletes are set forth and was not intended in any way to expand the term "athlete" to include coaches. Section 214(c)(4)(A) specifically states that section 101(a)(15)(P)(i)(a) refers to an alien who "performs as an athlete" and "seeks to enter the United States. . . for the purpose of performing as . . . an athlete with respect to a specific athletic competition." The P-1 nonimmigrant classification is limited to internationally recognized athletes who are coming to the United States to perform solely as competitive athletes. Where the language of a statute is clear on its face, there is no need in inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984).

The AAO notes that in other nonimmigrant categories, 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 position as a director of coaching at the petitioner's youth soccer program does not demonstrate that he is coming to perform as an athlete at an internationally recognized level or competition, nor does it demonstrate that he will be coming to perform as a P-1 nonimmigrant coach because he 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.

Based upon the foregoing 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.