

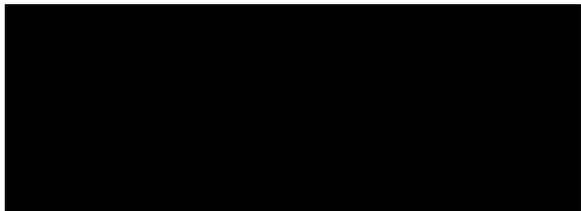
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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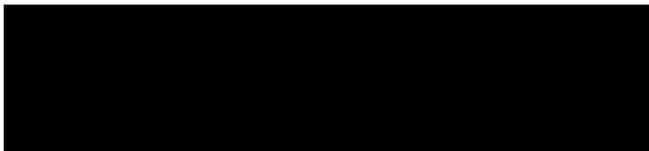
FILE: WAC 07 028 51404 Office: CALIFORNIA SERVICE CENTER Date: APR 28 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition in a decision dated January 19, 2007. On August 18, 2008, the Administrative Appeals Office (AAO), withdrew the director's decision and remanded the petition to the service center for further review and entry of a new decision. On remand, the director issued a request for additional evidence on August 29, 2008, and provided the petitioner with 12 weeks in which to submit additional documentation in support of the petition. The director issued a notice of abandonment on December 23, 2008, and certified the decision to the AAO. The AAO will affirm the director's decision to summarily deny the petition as abandoned pursuant to 8 C.F.R. § 103.2(b)(3).

The petitioner operates an equine facility. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, 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), for a period of four years as essential support for the petitioner's show riders and trainers. The petitioner seeks to employ the beneficiary as a horse groomer and trainer.

The director denied the petition, finding the beneficiary would not be in the United States solely for the purpose of performing as an internationally recognized athlete with respect to a specific athletic competition.

The petitioner subsequently filed an appeal. On appeal, the AAO found that, despite the petitioner's request for consideration of the beneficiary as essential support personnel, the director's denial was based on the petitioner's failure to comply with evidentiary criteria required for P-1 classification of an alien as an internationally recognized athlete. The AAO therefore withdrew the director's decision and remanded the petition to the director for further action. The AAO advised the director that the petition should be evaluated pursuant to the regulations at 8 C.F.R. § 214.2(p)(3) and 8 C.F.R. § 214.2(p)(iv)(B), which govern the standards and evidentiary requirements for P-1 essential support aliens.

On August 29, 2008, the director issued a request for additional evidence, providing the petitioner 12 weeks in which to submit additional evidence relating to the eligibility requirements for essential support personnel. According to the notice of abandonment, the request for evidence was re-mailed to the petitioner on September 9, 2008.

The petitioner failed to respond to the director's request for evidence within 12 weeks, and therefore, the director denied the petition for abandonment, pursuant to 8 C.F.R. § 103.2(b)(15), in a decision dated December 23, 2008. The director also issued a notice of certification advising the petitioner that the matter has been certified to the AAO pursuant to 8 C.F.R. § 103.4(a)(2), and granting 30 days in which to support a brief or written statement. As of this date, the AAO has not received a brief of statement from counsel or the petitioner, and the record will be considered complete.

The regulation at 8 C.F.R. § 103.2(b)(13)(i) states:

. . . . If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

Upon review, the AAO concurs with the directors' decision and affirms the denial of the petition based on its abandonment by the petitioner.

The AAO notes that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5(iv)(2). 8 C.F.R. § 103.2(15). Denial due to abandonment does not preclude the filing of a new application or petition with a new fee; however the priority or processing date of an abandoned petition may not be applied to a later application. *Id.*

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.

**ORDER:** The director's decision dated December 23, 2008 is affirmed. The petition is denied.