

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

D4

FILE: WAC 08 800 10228 Office: CALIFORNIA SERVICE CENTER Date:

AUG 07 2009

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF BENEFICIARY:

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 or reopen, 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as improperly filed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary as an athlete under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner is self-described as an athletic management company. It seeks to employ the beneficiary as a boxer for a period of three years. The petitioner indicated on Form I-129 that the basis for classification is a "change in previously approved employment."¹

The director denied the petition on October 3, 2008 concluding that the petitioner did not establish the beneficiary's eligibility for classification as a P-1 athlete. In denying the petition, the director emphasized that the petitioner failed to submit any of the required initial evidence in support of its petition, which was filed using the U.S. Citizenship and Immigration Services (USCIS) Electronic Filing (e-Filing) system.

Counsel filed a timely appeal on November 3, 2008. The AAO notes that counsel indicates on the Form I-290B, Notice of Appeal or Motion, that he represents the petitioner. However, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, executed by an authorized official of the petitioning company. The Form G-28 submitted on appeal has not been signed by the petitioner and does not identify the name of the authorized company official. The Form G-28 and the Form I-129, Petition for a Nonimmigrant Worker, filed using the USCIS e-Filing system bear the beneficiary's electronic signature. Although the beneficiary indicating that he was signing the documents on behalf of the petitioner, there is no evidence in the record to establish that the beneficiary is an officer or otherwise authorized official of the petitioning company. Rather, the record indicates that the beneficiary has signed a "boxer-manager" contract with the petitioning company. It must be concluded that counsel represents the beneficiary, not the petitioner. Pursuant to 8 C.F.R. § 103.2(a)(3), neither the beneficiary nor his representative is a recognized party in a petition proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

- (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Similarly, only an authorized party may maintain an appeal. 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal—(A). *Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

¹ USCIS records indicate that the beneficiary was previously granted P-1 status from September 1, 2006 until June 10, 2008 (WAC 06 191 50585). The approved petition was filed by Cappiello Promotions, Inc.

Inasmuch as neither the beneficiary nor his representative has standing to file an appeal in this matter, the appeal must be rejected as improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

Although the appeal will be rejected as improperly filed, the AAO notes for the record that the regulations would otherwise mandate the summary dismissal of the appeal. As noted above, the petition was denied based on the petitioner's failure to submit any of the required initial evidence required by the regulations pertaining to P classification nonimmigrants in general and P-1 nonimmigrants. *See* 8 C.F.R. §§ 214.2(p)(2)(ii) and 214.2(p)(4)(ii)(B).

Counsel filed the Form I-129, Petition for a Nonimmigrant Worker, using the USCIS e-Filing system on June 7, 2008. The form instructions for Form I-129 advise that if a petition is filed without the required initial evidence, the petitioner will not establish a basis for eligibility and USCIS may deny the petition. The instructions for electronic filing further instruct the petitioner that the required initial evidence must be received by the Service Center within seven business days of filing the form electronically.

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission...

The regulation at 8 C.F.R. § 103.2(b)(1) states:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

Finally, the regulation at 8 C.F.R. § 103.2(b)(8)(ii) states, in pertinent part:

Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or ineligibility. . . .

The director denied the instant petition on October 2, 2008, after waiting nearly four months for submission of the required initial evidence, which, as noted above, was due within seven business days of the date of filing. While the regulations at 8 C.F.R. § 214.2(p)(13) provide that no supporting documents are required when a petitioner seeks to extend the validity of a beneficiary's original P-1 petition, the instant petition was filed to request a change in the beneficiary's previously employed employment and an extension of his nonimmigrant status. The instant petitioner did not file the most recent previous petition on behalf of the beneficiary and therefore the

regulation at 8 C.F.R. § 214.2(p)(13) does not apply. Therefore, the AAO concludes that the director's decision to deny the petition based on lack of initial evidence was proper.

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.

On appeal, counsel does not acknowledge the stated grounds for denial, much less identify an erroneous conclusion of law or statement of fact on the part of the director. Counsel merely asserts that the beneficiary is clearly eligible for the benefit sought, but does not claim that any of the required evidence of the petitioner's and beneficiary's eligibility was previously submitted to USCIS prior to the adjudication of the petition. Therefore, even if the appeal had been properly filed by an affected party, the regulations would mandate its summary dismissal.

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.

ORDER: The appeal is rejected.