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U.S. Citizenship
and Immigration
Services



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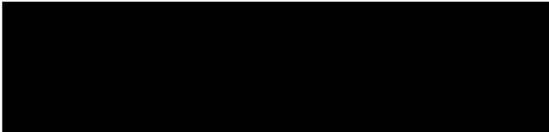
FILE: SRC 06 087 52651 Office: TEXAS SERVICE CENTER Date: **FEB 09 2009**

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)

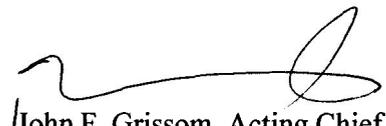
ON BEHALF OF PETITIONER:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P). The petitioner is self-described as a provider of support personnel for the horse racing industry. It seeks to temporarily employ the beneficiary as a jockey assistant for a period of approximately three years and 11 months.

The director denied the petition on August 24, 2006, concluding that the beneficiary does not qualify as an essential support alien in accordance with the regulations at 8 C.F.R. § 214.2(p)(3). Specifically, the director determined that the petitioner: (1) failed to establish that the beneficiary has performed as essential support personnel for the principal alien and is integral to his performance; (2) failed to demonstrate that the beneficiary will perform support essential services solely for the principal alien in the United States; and (3) failed to submit a consultation from an appropriate labor organization.

Counsel for the petitioner filed the instant appeal on September 25, 2006. Where asked to briefly state the reason for appeal on the Form I-290B, Notice of Appeal, counsel stated the following:

Documents submitted clearly evidenced the non-existence of appropriate labor organizations. Department failed to understand the essentiality and nature of the duties of a jockey assistant/trainer assistant.

Counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days. As no additional documentation has been incorporated into the record, the AAO contacted counsel by facsimile on October 27, 2008 to advise him that no brief or evidence had been incorporated into the record as of that date, and to afford him an opportunity to resubmit any documentation that had previously been timely submitted. As of this date, counsel has not responded to the AAO's correspondence, and the record will be considered complete.

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

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.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that beneficiary is qualified to perform the services and the services cannot be readily performed by United States workers.

The director denied the petition, in part, based on the petitioner's failure to submit sufficient evidence to establish the beneficiary's prior essentiality, critical skills and experience with the principal P-1 athlete, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence failed to meet the regulatory requirements for this visa classification. Specifically, the director found that the petitioner had very poorly documented the beneficiary's prior relationship with the principal athlete in an essential support role, and in fact, at the time of filing, failed to indicate that the beneficiary had ever worked for the principal alien in any capacity. The director acknowledged that the petitioner later submitted a letter from the P-1 athlete, [REDACTED] indicating that the beneficiary assisted him at a New York racetrack, but the director found that the letter was excessively vague and not supported by any evidence. The director therefore concluded that the petitioner did not demonstrate that the beneficiary has performed as essential support personnel for the principal alien or that she is an integral part of his performance.

Counsel's brief statement on appeal does not address these findings. Counsel states that "the department failed to understand the essentiality and nature of the duties of a jockey assistant/trainer assistant." Counsel's general assertions regarding the duties of jockey assistant ignore the primary reason for the denial of the petition, which was the lack of evidence that the beneficiary has worked for the principal P-1 athlete. The director did not question the nature of the duties to be performed, but rather whether this beneficiary has been and would be performing the claimed duties for the P-1 athlete in question.

Based on the foregoing, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiary qualifies as an essential support alien as defined at 8 C.F.R. § 214.2(p)(3). The evidence of record does not establish that the beneficiary provides services essential to the successful performance of the P-1 athlete's services or that she has experience providing such support to the P-1 alien.

Counsel also fails to address the director's finding that the petitioner did not demonstrate that the beneficiary will perform support services for the P-1 alien and strictly for the principal alien under the terms of the written contract submitted. *See* 8 C.F.R. § 214.2(p)(4)(iv)(B)(3). As noted by the director, the contract submitted was between the beneficiary and the petitioner as agent, and does not name a specific jockey for whom the beneficiary would work. The AAO concurs that the contract was insufficient to establish that the beneficiary would be performing essential support services solely for the principal P-1 athlete.

Finally, the AAO acknowledges counsel's assertion that the petitioner established the non-existence of appropriate labor organizations able to provide a written consultation in this matter. The director named four such organizations in the decision and the petitioner fails to specify why it is unable to obtain a written consultation from any of them. In fact, the record contains a letter dated June 19, 2006 from [REDACTED], [REDACTED] who states that this organization "is the only organization in the United States at this time that has the authority to represent jockeys in labor matters." The petitioner's insistence that there are no appropriate labor organizations in the beneficiary's area of expertise is not persuasive.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the director's decision, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. 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). As discussed above, the brief statements submitted does not acknowledge the primary grounds for the denial of the petition.

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 support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.