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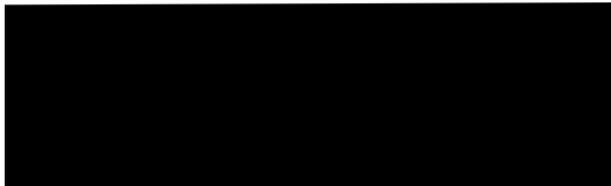
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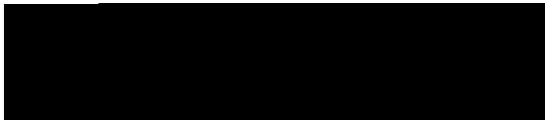
U.S. Citizenship
and Immigration
Services

D9



FILE: WAC 08 800 06171 Office: CALIFORNIA SERVICE CENTER Date: FEB 20 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)

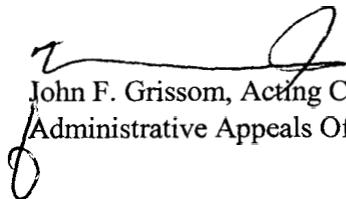
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO will 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 professional cycling team. It seeks to temporarily employ the beneficiary as food service worker to provide support services to a P-1 athlete for a period of approximately eight months.

The director denied the petition on two separate grounds, concluding that the beneficiary does not qualify as an essential support alien under the regulations because the petitioner did not establish: (1) that the proffered position is an integral part of the principal athlete's performance; or (2) that the beneficiary has the requisite prior experience with the principal athlete.

On appeal, the petitioner asserts that the beneficiary will perform qualifying essential support services and that she does in fact have the requisite extensive experience working with the principal athlete. The petitioner submits additional evidence in support of the appeal.

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 regulation at 8 C.F.R. § 214.2(p)(4)(iv) states:

- (A) *General.* An essential support alien as defined [above] 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.
- (B) Evidentiary criteria for a P-1 essential support petition. A petition for P-1 essential support personnel must be accompanied by:
 - (1) A consultation for 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.

The issues to be addressed in this proceeding are: (1) whether the petitioner established that the beneficiary will be performing services that cannot be performed by a United States worker and that are essential to the successful performance of services by the principal P-1 athlete; and (2) whether the beneficiary has the requisite prior relationship providing such services to the principal athlete.

The petitioner filed the nonimmigrant petition electronically on March 4, 2008. The petitioner indicated the beneficiary's job title as "Food Service," on the petition indicated that her position would entail "cooking of special Colombian food." On the O and P Classification Supplement to Form I-129, the petitioner stated the following:

[The beneficiary] will be assisting _____ who has P1 status under [the petitioning company]. She will be cooking traditional Colombian food for these riders and working as an assistant to make these Colombians feel more at home in the U.S.

The O and P Classification Supplement also instructs the petitioner to provide dates of the P support alien's prior experience with the P alien. The petitioner did not complete this section of the form.

In a letter submitted in support of the petition, the petitioner stated that it is "always looking for ways to make our foreign riders feel more at home while they are in the U.S." The petitioner stated that the beneficiary will "help our management staff with cooking and some translating." The petitioner indicated that the beneficiary would also act as a "staff liaison to assist with our Latin riders and fans," and noted that the beneficiary "has experience as a liaison in situations at resorts, etc." The petitioner emphasized the **importance of quality preparation of traditional food**. Finally, the petitioner described the beneficiary as a "friend" of _____

The petitioner also submitted a letter dated March 3, 2008 from the principal athlete who stated:

[The beneficiary] is an important part of my race staff and essential support personnel. She is able to prepare authentic Colombian food for me during major races as well as for my teammates Food sickness has been a big problem for us as it was at the Tour of California for many riders including the race leader.

She will also assist in translation with my teammates and fans as they do not speak English and she speaks Spanish and English well enough to communicate our race needs during major events.

On March 12, 2008, the director issued a request for additional evidence (RFE). The director requested a statement describing the beneficiary's prior essentiality, critical skills and experience with the principal alien, and any additional documentation that would establish the beneficiary's critical knowledge and experience with the P-1 alien. The director also requested: (1) a consultation from a labor organization with experience in the area of the

beneficiary's skill, and (2) a copy of the written contract or summary of the terms of the oral agreement between the beneficiary and the employer.

In a response dated April 2, 2008, the petitioner noted that the beneficiary has an oral agreement under which she will be compensated for travel, room and board. The petitioner indicated that "she is mainly gathering experience with working with a pro cycling team here in the United States in hopes of getting a more full-time position in the future." The petitioner stated that the beneficiary "will be making traditional Colombian food as well as doing some translation and support with Hispanic team fans."

The petitioner provided a consultation letter signed by [REDACTED] of USA Cycling dated March 20, 2008, which stated that the beneficiary "has performed support duties in Colombia for a number of cycling teams" and noted that it is important for foreign riders to have native support personnel from their home countries. The organization stated that it has no objection to the approval of the petition. The AAO notes that while the letter bears a USA Cycling logo, there is no address, telephone number or other identifying information on the letter which would allow USCIS to verify its contents.

Finally, the petitioner submitted a letter on the letterhead of "Secretaria de Deporte y Recreacion de Caldas," which references the beneficiary. The letter is written in Spanish and was not accompanied by a certified English translation. However, the AAO notes that the letter does not identify the name of the principal athlete.

The director denied the petition on April 19, 2008, concluding that the petitioner had failed to establish that the beneficiary qualifies as an essential support alien. The director determined that the proffered position had not been shown to be an integral part of the principal athlete's performance, or that the beneficiary has the requisite experience with the principal athlete.

On appeal, the petitioner states the following in a letter dated May 10, 2008:

[The beneficiary] is essential support personnel and meets this requirement because it would be cost prohibitive and require lengthy training time to find someone here in the United States to perform this function. She not only has the experience but an existing team relationship with the internationally known, professional cycling athlete, [REDACTED]. Her knowledge and experience of his needs during a race and his training are extensive. We feel that this qualifies her for the definition of essential support personnel.

In support of the appeal, the petitioner submits an updated letter from [REDACTED] dated May 5, 2008. Mr. [REDACTED] states that he did not explain in enough detail why it is essential that he have the beneficiary as a "race assistant," and describes his need for her services:

[The beneficiary] is specifically trained to my specific needs such as dietary, support, translation and knows my equipment such as my race bike and my time trial bike. It would be very difficult to find someone here, train them, and have them perform this role at an expert level without lengthy training and it would be very costly. She has worked with me for a long time and is an essential part of my team.

██████████ noted that his relationship with the beneficiary has never been based on a written contract. However, he indicates that they have since entered a written contract and attaches an “Expert Support Personnel Contract,” dated May 1, 2008, between the petitioner, himself, and the beneficiary. The contract requires the beneficiary to provide support services from May 1, 2008 until January 15, 2009. The services include attending and supporting events, selling sponsor’s products, appearances at events/bike shops, and “staff duties.” In exchange, the beneficiary would receive a \$500 monthly stipend, equipment and paid travel expenses.

Upon review, the petitioner has not established that the beneficiary is qualified as essential support personnel, or that she has a prior relationship with the principal P-1 athlete.

At the time of filing, the petitioner represented the beneficiary as a “friend” of the P-1 athlete who would be cooking Colombian food, translating for Spanish-speaking athletes, and liaising with Hispanic fans of the petitioner’s cycling team. The petitioner provided no explanation as to why duties such as cooking or speaking both English and Spanish, cannot readily be performed by a United States worker, or how such services are essential to the athlete’s performance. Furthermore, the petitioner provided no information regarding the beneficiary’s qualifications, other than indicating that she had served as a “liaison” previously. Most importantly, the petitioner provided no evidence that the beneficiary has a prior working relationship with the P-1 athlete. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

When asked to provide additional evidence of the beneficiary’s essential skills, the petitioner once again stated in its letter dated April 2, 2008 that the beneficiary “will be making traditional Colombian food as well as doing some translation and support with Hispanic team fans.” The petitioner also added that she is coming to the United States for the purpose of “gathering experience with working with a pro cycling team,” and noted that she would only receive travel costs and room and board. Based on these statements, it has not been established that the beneficiary is experienced in working with professional cyclists in general, or with the P-1 principal athlete in particular, or that her duties would go beyond preparing traditional foods or assisting with translations, duties which have not been demonstrated to be essential or integral to the performance of the athlete. There is no evidence in the record to establish that the P-1 cyclist has special dietary needs that must be met by a specialized cook, chef or nutritionist, nor is there any evidence that the beneficiary is skilled or experienced in preparing foods that would meet such needs.

Furthermore, the letters submitted in response to the RFE were silent with respect to any prior working relationship between the beneficiary and the principal athlete. Mr. ██████████ of USA Cycling stated that the beneficiary “has performed support duties in Colombia for a number of cycling teams,” but did not indicate that she had specifically worked with ██████████. Furthermore, as noted above, ██████████ letter is missing critical information that would allow USCIS to verify its contents.

The second letter submitted in response to the RFE is written in Spanish and not accompanied by an English translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. While the letter has not

been translated, it is evident that it does not mention the beneficiary's prior experience working with Mr. Grajales.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The director specifically requested a statement describing the beneficiary's prior essentiality, critical skills and experience with the principal alien, and the petitioner failed to submit the requested evidence in response. The 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On appeal, the petitioner explicitly asserts for the first time the beneficiary has "an existing team relationship," with the P-1 alien, [REDACTED], with extensive knowledge of his training needs. The petitioner offers no explanation as to why it initially represented the beneficiary as a "friend" of the athlete, or why it failed to submit evidence regarding the relationship what was expressly requested by the director prior to the adjudication of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner also submits a new letter from [REDACTED], who previously stated that the beneficiary would prepare Colombian food and assist in translation, based on her ability to prepare authentic traditional foods and speak English and Spanish. In the previous letter, he vaguely referred to the beneficiary as a member of his race team, but provided no information as to when or where he previously worked with her. In the updated letter, [REDACTED] now claims that the beneficiary is "specifically trained" to meet his "dietary, support, translation" and equipment needs. He states that the beneficiary has worked with him "for a long time." The record remains devoid of any documentary evidence of a prior working relationship between the beneficiary and the P-1 athlete. Again, the petitioner's assertions, without supporting documentary evidence, are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The petitioner has provided no documentary evidence to overcome the conflicting statements made regarding the beneficiary's skills and experience, her prior relationship with the principal athlete, or the true nature of the support services she would provide in the United States. Accordingly, the petitioner has failed to establish her eligibility as an essential support worker.

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 not met that burden.

ORDER: The appeal is dismissed.