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FILE: EAC 08 226 51451 Office: VERMONT SERVICE CENTER Date:

NOV 25 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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the nonimmigrant petition. The director subsequently issued a notice of intent to revoke, and after reviewing the petitioner's rebuttal evidence, revoked the approval of the petition on May 28, 2009. The matter 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 valet for a period of approximately three years and eight months.

The director initially approved the nonimmigrant petition on November 7, 2008. On March 12, 2009, the director issued a notice of intent to revoke, advising the petitioner that the evidence of record was deficient as it: (1) did not establish that the petitioner is a bona fide agent or employer for purposes of filing a P classification petition; (2) did not include a detailed explanation of the nature of the proposed events or activities, beginning and end dates for such events or activities, or an itinerary; and (3) did not include a detailed statement and supporting evidence describing the alien's prior essentiality, critical skills or experience with the principal P-1 alien. The director ultimately revoked the approval of the petition determining that the petitioner failed to submit evidence that it qualifies as an agent pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(2), and failed to submit the requested detailed explanation of the nature of the proposed events or activities or an itinerary, as required by 8 C.F.R. § 214.2(p)(2)(ii)(C).

The petitioner subsequently filed an appeal. On the Form I-290B, Notice of Appeal or Motion, where asked to provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed, counsel states: "Wrong interpretation of the law." Counsel indicated that he would submit a brief and/or additional evidence to the AAO within 30 days. The appeal was filed on June 29, 2009. As of this date, no additional evidence has been incorporated into the record of proceeding, and the record will be considered complete.<sup>1</sup>

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.

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<sup>1</sup> The AAO contacted counsel by facsimile on October 23, 2009 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. Counsel has not responded to the AAO's correspondence.

Title 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

The director revoked the approval of the petition based on the petitioner's failure to provide evidence that the petitioner qualifies as a *bona fide* agent eligible to file the petition pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(2). In revoking the approval, the director observed that the petitioner did not submit the required complete itinerary of services or engagements. The director further noted that the evidence submitted suggests that the petitioning company exists solely to file petitions with USCIS and is neither an agent performing the function of an employer or a company in business as an agent. In revoking the approval of 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.

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 revocation of the petition approval. Counsel's general objection that the director's decision amounted to a "wrong interpretation of the law,"

without specifically identifying any errors on the part of the director, is 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).

The petitioner has continually emphasized that it is a "bona fide U.S. entity." The AAO acknowledges that the petitioner is a corporation that has been registered in the State of Florida and the record shows its status as "active," meaning it has met its annual report filing requirements and has not been voluntarily or administratively dissolved. However, the director has specifically requested documentary evidence to establish that the petitioner in this matter meets the conditions for a *bona fide* agent eligible to file a P nonimmigrant petition, pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E).

The AAO notes that, in response to the notice of intent to revoke, counsel quoted the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) and particularly emphasized the provision addressing "agents performing the function of an employer." Such an agent must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested. 8 C.F.R. § 214.2(p)(2)(iv)(E)(I). The AAO notes that, while the record contains a contract between the petitioner and the beneficiary, the contract was not signed by the beneficiary, does not specify the wage offered, and is not accompanied by an itinerary of definite employment. Therefore, the petitioner has not met the conditions to file this petition as an agent pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(I) or (2).

Beyond the decision of the director, the AAO notes that the record contains no 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). The AAO notes that the Form I-129 Supplement O/P instructs the petitioner, at item #6, to list the date of the alien's prior experience with the P alien. The petitioner indicated "United Kingdom" rather than providing the requested information. The initial evidence did not include any evidence regarding the beneficiary's prior relationship with the principal athlete, or any other evidence regarding the beneficiary's employment history and qualifications.

In the notice of intent to revoke, the director addressed this deficiency and instructed the petitioner to provide a more detailed statement describing the beneficiary's prior essentiality, critical skills and experience, supported by evidence demonstrating that the beneficiary has worked with the P-1 athlete in the past. In response, the petitioner submitted an excerpt of an article that was published in the November 20, 2004 issue of *The Blood Horse*. The article contains a section detailing "The Costs of Being a Jockey," and indicates that a jockey's typical expenses include paying 3-5% of their earnings to a valet. Counsel asserted that this article serves as evidence that employing the services of a valet is "an essential part of the profession of being a jockey."

While the AAO does not doubt that certain jockey valets could qualify for P-1S classification as essential support personnel, the regulations require the petitioner to establish that the instant beneficiary has previously worked *for the principal P-1 athlete* in an essential support capacity. Here, there is no evidence that the beneficiary has ever worked for the principal athlete or that she even has any prior experience as a jockey valet. 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). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.