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

D9

FILE: WAC 06 223 51569 Office: CALIFORNIA SERVICE CENTER Date: SEP 04 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, a sports agent, 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 seeks an extension of the beneficiary's P-1S status so that he may work as groom/horse trainer for a P-1 athlete for a period of approximately 23 months. The beneficiary was previously granted P-1S status to provide essential support services to a different P-1 athlete.

The director denied the petition on December 19, 2006, concluding that the beneficiary does not qualify as an essential support alien under the regulations because the petitioner did not provide a consultation from a labor organization with expertise in the area of the alien's skill, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B). The director noted that the petitioner stated that the United States Equestrian Federation is the sole show jumping, eventing and dressage organization in the United States, yet failed to provide a consultation from this organization. The director acknowledged that the petitioner submitted a letter from [REDACTED] in lieu of the consultation, and claimed that he was a member of the USEF. However, the director noted that the letter provided was not on letterhead and did not include contact information, and could not be accepted in lieu of the required consultation.

On appeal, the petitioner states that it has obtained a "proper consultation" from [REDACTED] president of Harness Horseman International, "a prominent and distinguished labor organization in the American show horse industry," along with a new letter [REDACTED] which has been printed on his employer's letterhead.

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 from 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 sole issue addressed by the director is whether the petitioner satisfied the evidentiary requirement of providing a consultation from a labor organization with expertise in the area of the alien's skill, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(1). The regulation at 8 C.F.R. § 214.2(p)(7) further explicates the consultation requirement and states, in pertinent part:

- (vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.
- (vii) *Labor organizations agreeing to provide consultations.* The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations. The Service will also list in its Operations Instructions those occupations or fields of endeavor where it has been determined by the Service that no appropriate labor organization exists.

The regulation at 8 C.F.R. § 214.2(p)(7)(i)(C) provides that the advisory opinion shall be submitted along with the petition when the petition is filed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 6, 2006. With respect to the consultation requirement, the petitioner stated in its letter dated June 29, 2006, the following:

There is no "labor organization" with expertise in the area of show jumping, eventing and dressage and the rules of these equestrian sports. The United States Equestrian Federation (U.S.E.F.) is the sole organization which governs the sports of show jumping, eventing and

dressage in the U.S. The U.S.E.F. is the only organization with the knowledge of the world's show jumpers and their professional grooms and the world of equestrian sports in general. We have enclosed a letter from [REDACTED], Hunter/jumper trainer for the past 30 years who is an active and registered member of the United States Equestrian Federation which we submit to the Immigration Service in lieu of an Advisory Opinion.

The petitioner submitted a letter dated April 16, 2004 from [REDACTED] Ms. [REDACTED] did not provide evidence of her membership in the USEF or evidence of her authority to provide consultations on behalf of the USEF. Furthermore, she did not evaluate the beneficiary's essentiality to and working relationship with the principal athlete, [REDACTED], or state whether United States workers are available who can perform the support services, as required by at 8 C.F.R. § 214.2(p)(7)(vi). Rather, she stated that she knows the beneficiary based on his relationship with equestrian athlete [REDACTED] for whom the beneficiary served as a groom. Accordingly, [REDACTED] letter fails to provide the requisite consultation pursuant to the regulation at 8 C.F.R. § 214.2(p)(7)(vi).

In a request for additional evidence (RFE) issued on September 1, 2006, the director instructed the petitioner to submit a consultation from a labor organization with expertise in the area of the alien's skill.

In a response dated October 24, 2006, the petitioner once again noted that USEF is "the only organization with the knowledge of the world's show jumpers and their professional grooms and the world of equestrian sports in general." In lieu of a consultation, the petitioner submitted a letter dated September 21, 2006 from [REDACTED] who was identified as "an active member of The United States Equestrian Federation" and an Olympic medalist in equestrian sports.

[REDACTED] did not provide evidence of his membership in the USEF, or evidence of his authority to provide consultations on behalf of the USEF. He stated: "As an industry leader, I affirm that The United States Equestrian Federation is the sole show jumping, eventing and dressage organizations in the United States."

With respect to the relationship between the beneficiary and the principal P-1 athlete, [REDACTED] stated:

I know many of the world's leading equestrians including [REDACTED], [w]hom I know on both a personal and professional basis. I also know [the beneficiary], his groom, personally and professionally for quite sometime. He is an experienced groom from Argentina who has gained knowledge from working in numerous countries alongside some of the best horse trainers in the world.

As noted by the director, the letter from [REDACTED] was not on letterhead, and did not provide his contact information. In addition, [REDACTED] fails to evaluate the beneficiary's essentiality to and working relationship with [REDACTED] in any probative detail, as required by the regulation at 8 C.F.R. § 214.2(p)(7)(vi). Mr. [REDACTED] refers to the beneficiary as [REDACTED] groom, but fails to provide any details regarding the date and duration of the beneficiary's past work for [REDACTED]. Accordingly, the AAO concurs with the director that [REDACTED] letter fails to provide the requisite consultation pursuant to the regulation at 8 C.F.R. § 214.2(p)(7)(vi).

On appeal, the petitioner submits what it refers to as a "proper consultation from a labor organization," in the form of a letter dated January 18, 2007 from [REDACTED], President of the Harness Horsemen's International. The petitioner states that it obtained the consultation after it responded to the RFE. As noted above, the regulations require the petitioner to submit evidence that it has obtained the consultation at the time the petition is filed. 8 C.F.R. § 214.2(p)(7)(i)(C). At a minimum, the petitioner should provide evidence that it requested the consultation prior to filing the petition. The petitioner had ample opportunity to obtain a consultation prior to the adjudication of the petition and opted to obtain one only after the petition was denied.

However, even if the consultation had been timely obtained and submitted, the AAO notes that [REDACTED] also fails to evaluate the beneficiary's essentiality to and working relationship with [REDACTED], nor does he state whether there are U.S. workers available to perform the proposed support services, as required by 8 C.F.R. § 214.2(p)(7)(vi). He refers to the beneficiary, a groom, as a "world class athlete," and notes that [REDACTED] requires the beneficiary's services, but he does not provide any probative details regarding the working relationship between the beneficiary and [REDACTED]. Mr. [REDACTED] letter is insufficient to meet the evidentiary requirement at 8 C.F.R. § 214.2(p)(7)(vi).

Finally, the AAO notes that the new letter submitted on appeal from [REDACTED] is identical in content to the letter provided in response to the RFE, and, for the reasons discussed above, does not satisfy the petitioner's burden to provide a written consultation from an appropriate labor organization. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the remaining issues 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, as required by 8 C.F.R. § 214.2(p)(3). The regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2) requires the petitioner to submit a statement describing the alien's prior essentiality, critical skills, and experience with the principal alien.

On the O and P Classification Supplement to Form I-129, the petitioner stated that the beneficiary's duties in the United States will be to train and prepare horses for P-1 athlete [REDACTED] who competes in U.S. and international show jumping events. The petitioner did not complete question #6 on the O and P Classification Supplement, which instructs the petitioner to list the dates of the alien's prior experience with the P alien if applying for a P support alien.

The petitioner submitted a four-page letter dated June 29, 2002 in support of the petition. However, the petitioner did not mention any prior working relationship between the beneficiary and the P-1 athlete who seeks to hire him, [REDACTED]. The petitioner stated that the beneficiary "has trained horses for some of the top equestrians in Argentina."

The petitioner submitted recommendation letters from [REDACTED] and [REDACTED], all of which were prepared in 2004. The letters mention the beneficiary's experience working as a groom for [REDACTED]. There was no reference to the principal P-1 athlete [REDACTED] or the beneficiary prior essentiality and working relationship with him.

the RFE issued on September 1, 2006 that the petitioner provide the required statement describing the alien's prior essentiality, critical skills, and experience with the principal alien, and any additional documentation it feels may establish the beneficiary's critical knowledge of and experience with the P-1 alien.

In response, the petitioner submitted the above-referenced letter from [REDACTED] a letter from the P-1 athlete, and letters from three equestrian athletes – [REDACTED] and [REDACTED]

In his letter dated October 6, 2006, [REDACTED] states:

[The beneficiary] was working with me as my groom from 1998 until 2000. During that time he was an excellent groom and his outstanding knowledge and experience contributed to my success as a show jumper. Right now, I am competing in the United States and internationally at show jumping competitions and I need an experienced groom such as [the beneficiary]. Based on my prior experience with [the beneficiary], I am convinced that his work will contribute to my success during the upcoming competitions.

[REDACTED] fails to explain in any probative detail how the beneficiary's critical skills have been essential to his successful performance, and there is no evidence in the record to corroborate what little information he did provide regarding his prior working relationship with the beneficiary. As noted above, the petitioner's initial evidence contained no indication that the beneficiary and [REDACTED] had ever worked together.

None of the individuals who provided recommendation letters provided any probative details regarding the beneficiary or his prior relationship with the principal athlete. [REDACTED] states that she has competed with [REDACTED] and has come to know the beneficiary through her relations with him. She recommends the beneficiary "for his skillfulness with horses and his excellent work ethic." She does not state when or where she has competed with the beneficiary. [REDACTED] states that [REDACTED] is "among the best Grand prix riders," and that he also knows the beneficiary as "a devoted horse man with excellent grooming skills and outstanding experience with Grand prix Horses." He does not specifically state that the beneficiary worked for [REDACTED] in an essential support capacity. [REDACTED] states that he knows of [REDACTED] reputation as a professional show jumping rider, and that he has "also met his groom, [the beneficiary], during international show jumping competitions." He does not definitively state that he knows [REDACTED] or indicate when or where he met the beneficiary.

The general statements of the petitioner, [REDACTED] and the other individuals providing letters all fail to sufficiently describe the beneficiary's prior essentiality, critical skills, and experience with [REDACTED] as **required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2)**. 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)).

USCIS records indicate that [REDACTED] has been in the United States in P-1 status since 2001 and has apparently been able to compete successfully in the equestrian field by relying services provided by local grooms and trainers in the United States. The petitioner has not established that the beneficiary 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 alien. Therefore, record also fails to establish that the beneficiary meets the regulatory definition of an essential support alien at 8 C.F.R. § 214.2(p)(3). For this additional reason, the petition will be denied.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.