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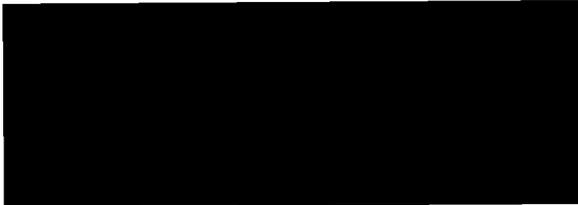
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

D9



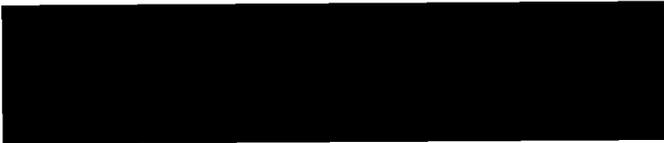
FILE: WAC 09 125 51351 Office: CALIFORNIA SERVICE CENTER Date: **APR 06 2010**

IN RE: Petitioner:  
Beneficiary:



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

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, 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 filed the nonimmigrant petition seeking to classify of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of five years. The petitioner, which is self-described as a horse show barn, seeks to employ the beneficiary temporarily in the United States as a P-1 athlete to serve as a "Professional Athlete/Rider."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary falls under any of the classes of athletes, performers and coaches admissible under section 101(a)(15)(P)(i) of the Act. The director determined that the beneficiary does not qualify as a "professional athlete" as defined at section 204(i)(2) of the Act. The director further found that the petitioner failed to establish that the beneficiary meets at least two of the six evidentiary criteria for internationally recognized athletes or athletic teams pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that "the 2006 COMPETE Act and all supporting documentation were not properly reviewed and considered in making the decision in this case." Counsel contends that, under the COMPETE Act, there is no requirement that the beneficiary be internationally recognized, provided that the petitioner establish that the beneficiary is a "professional athlete." Counsel submits a brief and additional documentary evidence in support of the appeal.

#### I. The Law

The instant petition was filed on March 26, 2009, subsequent to the passage of Public Law 109-463, "Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006" (COMPETE Act of 2006), which amended Section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. The COMPETE Act, signed into law on December 22, 2006, expanded the P-1 nonimmigrant visa classification to include certain athletes who were formerly admitted to the United States as H-2B nonimmigrants.

Under the current statute, as amended by the COMPETE Act, the P-1 nonimmigrant classification includes: (1) athletes who perform at an internationally recognized level of performance, individually or as part of a team; (2) professional athletes as defined in section 204(i)(2) of the Act; (3) athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and (4) professional and amateur athletes who perform in theatrical ice skating productions.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
  - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
  - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and
  - (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . . [.]

In relevant part, a "professional athlete," as defined at section 204(i)(2) of the Act, 8 U.S.C. § 1154(i)(2), is an individual who is employed as an athlete by:

- (A) A team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage.

The regulation at 8 C.F.R. § 214.2(p)(3) defines "team" as "two or more persons organized to perform together as a competitive unit in a competitive event."

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien must seek to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) states:

*P-1 classification as an athlete in an individual capacity.* A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own

reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

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

*Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

- (A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.
- (B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:
  - (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and
  - (2) Documentation of at least two of the following:
    - (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;
    - (ii) Evidence of having participated in international competition with a national team;
    - (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
    - (iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;

- (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;
- (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
- (vii) Evidence that the alien or team has received a significant honor or award in the sport.

## II. The Issues on Appeal

Here, the petitioner's primary claim is that the beneficiary qualifies as a "professional athlete" as defined in section 204(i)(2) of the Act, and that the petitioner therefore does not need to establish that the beneficiary is an internationally recognized athlete. The director also considered in the alternative whether the beneficiary meets the more stringent requirements pertaining to athletes who perform at an internationally recognized level of performance.

### A. "Professional Athlete"

The first issue to be addressed is whether the petitioner has established that the beneficiary is a "professional athlete" pursuant to section 214(c)(4)(A)(i)(II) of the Act. As noted above, a professional athlete for purposes of this classification, is an individual who is employed by a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage. *See* section 204(i)(2)(A) of the Act.

In denying the petition, the director observed that the petitioner provided no evidence to establish that the beneficiary will be employed by a sports team that is a member of an association of six or more professional teams. Referring to the regulatory definition of "team" at 8 C.F.R. § 214.2(p)(3), the director found that "equestrian riding and jumping is an individual competition and that the individuals do not perform together as a competitive unit."

Upon review, the AAO concurs with the director's determination. The petitioner has not established that the beneficiary qualifies as a "professional athlete" as that term is defined in the statute.

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that it is doing business as a "horse show barn," rather than as a professional athletic team. In a letter dated March 25, 2009, counsel for the petitioner stated that the petitioner is a "team" that is "internationally recognized as a leading competitor on the International Horse Show Circuit." Counsel asserted that, based on these facts, the beneficiary is a "professional athlete" as defined in the Act.

In a letter dated April 30, 2009, submitted in response to the director's request for additional evidence, counsel

stated:

[The petitioner's] Team and the beneficiary are members of the United States Equestrian Federation (USEF), who governs and regulates the Sport and its Competitions. . . .

The USEF currently has a [sic] thousands of members, that have millions of dollars in annual revenues, well in excess of \$10,000,000.00. In addition, annual revenue for prizes and awards for competition is well in excess of \$10,000.00. . . .

On appeal, counsel further addresses the USEF, stating:

The USEF is made up of hundreds of teams in the United States. The USEF Teams are in the following 8, of sport teams, all that is required under the 2006 Compete Act is 6. The teams are as follows: Dressage, Driving, Endurance, Eventing, Para-Equestrian, Reining, Show Jumping and Vaulting.

In support of the petition, the petitioner has submitted copies of United States Equestrian Federation (USEF) membership cards for the petitioner's "farm manager," [REDACTED] for another rider, and for the beneficiary, as well as [REDACTED] individual competition results. The name of the petitioning company or "team" does not appear on any of these documents.

The petitioner has also submitted extensive information regarding USEF, including its mission statement and 2009 Rule Book. The evidence submitted demonstrates that USEF is the national governing body for equestrian sport in the United States, and that USEF does govern the conduct of its members and regulates contests and exhibitions in the sport. However, the petitioner did not submit evidence that the equestrian sport is comprised of "6 or more professional sports teams" or that the petitioning organization is a professional sports team. Based on the evidence submitted, it is evident that USEF issues memberships to individuals, not to teams, and that competition occurs on an individual level.

The AAO acknowledges the petitioner's claim that its team "has been internationally recognized in equine sports in the United States and abroad for many years," but notes there is no corroborating evidence in the record to support the claim that the petitioner has been recognized in any capacity as a "team" competing in the equestrian sport. Again, the regulation at 8 C.F.R. § 214.2(p)(3) defines "team" as "two or more persons organized to perform together as a competitive unit in a competitive event." The AAO anticipates that evidence of a "sports team" would include documentation of the team's organization, performance, and results as a competitive unit in actual team events. [REDACTED] individual results in equestrian events are noted, but such results are not evidence that the petitioner is competing as a professional sports team in a league or association comprised of professional sports teams.

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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported

assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO can find no basis for considering the petitioning horse barn a "team" when there is no evidence that it participates in a team sport or that it is recognized in the industry as a professional sports team. Accordingly, the petitioner has not established that the beneficiary will be employed by the petitioner as a "professional athlete" as defined in section 204(i)(2) of the Act.

B. "Internationally Recognized Level of Performance"

The remaining issue in this matter is whether the petitioner has established that the beneficiary is an alien who performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(II) of the Act. To demonstrate that the beneficiary is an internationally recognized athlete, the petitioner must satisfy at least two of the evidentiary criteria provided at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

At the time of filing, the petitioner described the beneficiary as "a professional equestrian rider with years of experience within this specialized industry," and as "an asset to the equestrian industry." Counsel further stated that the beneficiary's "international reputation as a leading Professional Athlete/Rider is well established by his impressive list of participation in events/competitions and the international recognition which he has received competing in such competitions." The petitioner provided a copy of the beneficiary's USEF membership card identifying him as a "Senior Pro" member, and counsel indicated that the beneficiary "has successfully performed and competed in numerous events." The petitioner did not, however, provide any evidence of the beneficiary's competition or event results documenting his career as an equestrian athlete.

In the request for evidence issued on April 3, 2009, the director specifically requested documentary evidence to satisfy at least two of the seven evidentiary criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). In response to the RFE, counsel stated that the requested evidence was either not required or not applicable because the beneficiary is a professional athlete coming to the United States to join a professional sports team, pursuant to section 214(c)(4)(A)(i)(II) of the Act. Counsel emphasized that the petitioner's team "is definitely internationally recognized."

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i), the petitioner must submit evidence that the beneficiary has participated to a significant extent in a prior season with a major United States sports league. The record is devoid of any competition or event results the beneficiary has achieved in the United States or elsewhere as an individual athlete and does not indicate that he has ever competed as part of a major United States sports league. Even if the petitioner had established that USEF should be considered a "sports league," the petitioner could not meet this criterion without submitting evidence of the beneficiary's career as a competitive athlete in the United States. His USEF membership card is insufficient. Again, 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. at 165. The fact that the beneficiary is currently a USEF member is insufficient to establish that he meets this criterion.

To meet the second criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(ii), the petitioner must submit evidence that the beneficiary has participated in international competition with a national team. Again the record contains no documentary evidence of the beneficiary's participation in any specific equestrian events or competitions, much less his participation in international competition with a national team.

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iii) requires the petitioner to submit evidence that the beneficiary has participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition. The petitioner has not submitted evidence to meet this criterion.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv), the petitioner must submit a written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized. In this regard, the petitioner submitted a letter dated November 6, 2008 from [REDACTED] [REDACTED] of the USEF. [REDACTED] states that she has been provided with a copy of the beneficiary's resume and that she "has no objection to the granting of the petition."

The director acknowledged the letter in the notice of denial, but found that the letter does not meet the criterion because [REDACTED] did not detail how the alien is internationally recognized. In response to the RFE, counsel for the petitioner stated: "All that is required is a 'NO objection' letter." The director found that "a statement that no objection is raised is not the same as a statement detailing how the beneficiary is internationally recognized." The AAO agrees [REDACTED] letter stating that she has no objection is sufficient to meet the consultation requirement pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), but it does not meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v), the petitioner must submit a written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized.

To satisfy this criterion, the petitioner submitted letters from five individuals. [REDACTED] an international show jumper, states that he is acquainted with the beneficiary, that the beneficiary "has proven his skills as a professional rider," and that "horses he has worked with, prepared and maintained have won international accolades."

[REDACTED] also an international show jumper, states that she has become acquainted with the beneficiary through her competitions on the horse show circuit and that the beneficiary's "exceptional abilities as an Athlete/Rider would be an asset to any Horse Show Barn."

[REDACTED] a professional horse show rider, states that he is acquainted with the beneficiary through his involvement in the equestrian industry, and that the beneficiary "has exemplified that he is a rider of consummate skill."

The petitioner also provided a letter from [REDACTED] who states that he is "aware that [the beneficiary] has been an integral part of the industry as a Professional Athlete-Rider with extraordinary skills in the sport."

Finally, the petitioner submitted a letter from barn owner [REDACTED] who states that she is "acquainted with [the beneficiary] in his capacity as Professional Athlete/Rider" and that the beneficiary has "exceptional riding abilities" and "unique experience and qualifications."

The petitioner also submitted extensive material regarding the individuals who provided letters, including their rankings, competition results, information regarding their farms, and articles about these individuals.

Upon review, none of the persons providing testimonials have detailed the beneficiary's accomplishments in the sport or how he is internationally recognized. The letters are written in vague language and do not establish how the beneficiary's achievements are renowned, leading, or well-known in more than one country. The petitioner has not established that the beneficiary meets this criterion.

To meet the sixth criterion, the petitioner must submit evidence that the individual or team is ranked, if the sport has an international ranking. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi). The petitioner has submitted the USEF Showjumping Computer Ranking List showing the rankings of 467 individual riders in the sport, but the beneficiary's name does not appear on the list, and no other evidence has been submitted to establish that the beneficiary is ranked among competitors in the sport. The petitioner has not established that the beneficiary meets this criterion.

The seventh and final criterion requires the petitioner to submit evidence that the alien or team has received a significant honor or award in the sport. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii). Counsel for the petitioner stated at the time of filing that "[the beneficiary] and [the petitioner] have received numerous and internationally recognized prizes and awards." However, when asked to submit evidence of any significant honors or awards the beneficiary has received, counsel simply replied that this evidence is not required. As such, the record contains no documentary evidence of the purported awards received by the beneficiary in his sport. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

### III. Conclusion

In summary, as discussed above, the petitioner has also failed to establish that the beneficiary is a professional athlete as described at section 214.2(c)(4)A(i)(II) of the Act. Furthermore, the evidence submitted by the petitioner fails to meet at least two of the criteria listed in the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). Therefore, the petitioner failed to establish that the beneficiary has achieved international recognition in the equestrian sport. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.