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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**

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FILE: WAC 08 253 51140 Office: CALIFORNIA SERVICE CENTER Date: **JAN 14 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 the beneficiary as an athlete 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, a martial arts school, seeks to employ the beneficiary temporarily in the United States as a P-1 athlete in the position of "Taekwondo Athletic/Instructor."

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary seeks to enter the United States solely for the purpose of performing as an athlete with respect to a specific athletic competition; and (2) that the beneficiary will participate in an athletic competition which requires participation of an athlete that has an international reputation. The director further found that the petitioner had failed to submit a consultation from an appropriate labor organization.

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 for the petitioner submits new evidence and asserts that "we still believe that [the beneficiary] qualifies as an internationally recognized athlete."

I. The Law

The instant petition was filed on September 25, 2008, 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 . . .[.]

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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;

- (B) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization

II. The Issues on Appeal

The AAO will first address the issue of whether the beneficiary is coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete that has an international reputation. Pursuant to 8 C.F.R. § 214.2(p)(4)(i)(A), an individual P-1 athlete must be coming to the United States to perform services which require an internationally recognized athlete. The beneficiary must be coming solely for the purpose of performing as such an athlete. *See* section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(1).

The regulation at 8 C.F.R. § 214.2(p)(3) defines "competition" as follows:

Competition, event or performance means an activity such as an athletic competition, athletic season, tournament, tour exhibit, project, entertainment event or engagement. . . . An athletic competition or entertainment event could include an entire season of performances.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 25, 2008. In a letter dated September 19, 2008, the petitioner described the beneficiary's proposed duties in the position of "Taekwondo Athletic/Instructor" as follows:

[The beneficiary] will play a vital role as a performing athlete of [the petitioner's team]. He will kick and punch alongside outstanding Taekwondo athletes in their own right, and lend his expertise to individuals desiring to "perfect" their craft [and] compete on the local, state, regional, national and international levels. More specifically, [the beneficiary] will oversee and train [the petitioner's] demonstration Team to conduct the organization's monthly demonstrations as well as invitational demonstrations throughout any given year. . . . [I]t is essential that painstaking preparation and practice occur weeks and months before demonstrations. The demonstrations are representative of both the quality of [the petitioner] and traditional movements of Korea's greatest national pastime, Taekwondo. Demonstrations are also utilized by Taekwondo athletes of [the petitioner] to practice the intricate movements and strategy/counter-strategy of Taekwondo in anticipation of local/ state/ regional/ national/ international championships that occur several times during any given year.

In addition to his duties as the head of [the petitioner's] Demonstration Team, [the beneficiary] will coach/instruct and lead [the petitioner] comprised of the organization's top

instructor and students. [The beneficiary], still in the prime years of his athletic career and capability, will be involved in constant year-round training to compete in state, regional, national and international events as a representative of Tiger Martial Arts. [The beneficiary] will be the most essential member of [the petitioner's] team, as both an athletic and coach/instructor. [The beneficiary] will lend his knowledge and expertise to the organization's top instructors and students to compete in local/state/regional/national/international level(s). He will conduct training sessions, sparring sessions, and general practice sessions to hone Taekwondo skills. He will assist our students pursue physical well being as athletes in the [petitioner's] organization to compete in sanctioned Taekwondo Championships.

The petitioner emphasized that the beneficiary possesses a 5th Dan level black belt, as well as a 3rd Class Instructor qualification and 3rd Level Judge certification from the Kukkiwon, World Taekwondo Headquarters in Korea. The petitioner's supporting evidence included a recommendation letter from [REDACTED] Secretary General of the World Taekwondo Federation, who recognizes the beneficiary "excellent activities as a Taekwondo instructor." The petitioner also submitted a letter of recommendation from [REDACTED] Secretary General of the Korea Taekwondo Association, who supports the beneficiary's application "for a position as a coach" at the petitioner's school.

The petitioner's initial evidence included an excerpt from the petitioner's public web site which announces upcoming events. The only events listed were belt tests, an internal tournament and a black belt seminar scheduled for September and October 2008. The petitioner did not submit a complete itinerary, evidence of the local, state, regional, national or international events in which the beneficiary would compete, or copies of any written contracts or a summary of the terms of the oral agreement under which the beneficiary would be employed as required by 8 C.F.R. § 214.2(p)(2)(ii)(B).

On November 19, 2008, the director issued a request for additional evidence in which she instructed the petitioner to submit, *inter alia*: a copy of any written contracts between the petitioner and beneficiary, or a summary of the terms of the beneficiary's oral agreement with the petitioner; an explanation of the nature of the proposed events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities.

In a response dated December 9, 2008, counsel for the petitioner summarized the terms of the beneficiary's oral agreement with the beneficiary, under which he will provide full time services in exchange for an annual salary of \$22,000 or more.

In response to the director's request for an explanation of the nature of the proposed events or activities, the petitioner stated that its organization provided a demonstration at a local children's festival in Fremont, California on August 3, 2008. The petitioner also provided an excerpt from its web site's events calendar for the period December 2008 through December 2009. The calendar lists monthly testing sessions to be held at the petitioner's two California locations. The calendar also includes the following events: (1) National Championship of Choi's All American Open, May 16, 2009, Fremont, California; (2) UC Berkeley Open Tournament, May 30, 2009; and (3) National Championship of American Taekwondo United, June 27-28, 2009, Queens College, New York.

The director denied the petition on January 28, 2009, concluding that the petitioner failed to establish that the beneficiary is coming to the United States solely for the purpose of performing as an athlete with respect to a specific athletic competition. The director determined that, based on the evidence submitted, the beneficiary's duties will primarily involve coaching/instructing others, while participation in athletic competition would be ancillary to his primary duties.

The director further found that most of the events included on the list provided by the petitioner were internal testing sessions that would take place at the petitioner's own locations, and not athletic competitions requiring the participation of an internationally recognized athlete. The director acknowledged the petitioner's planned participation at the National Championship of Choi's All American and National Championship of American Taekwondo United, but noted that the submitted itinerary was not supported by any evidence. Specifically, the director found that "there is no evidence that the events are scheduled, that the beneficiary is scheduled to compete in them, or that the events require internationally recognized athletes."

On appeal, counsel states that the petitioner believes that the beneficiary qualifies for the classification sought. However, counsel does not directly address the director's finding that the beneficiary will not be coming to the United States solely to perform as an athlete with respect to a specific athletic competition.

The new evidence submitted on appeal includes a letter from [REDACTED] of California Taekwondo United, who describes the beneficiary as "one of the most qualified instructors in the US." The petitioner also submits a letter from [REDACTED] of Union City, California, who notes that the petitioner "is attempting to hire a Korean martial arts master as an additional instructor to their business." In addition, the petitioner submitted the beneficiary's graduation certificate recognizing his completion of the 53rd International Referee Seminar sponsored by the World Taekwondo Federation in February 2009.

The petitioner also provides on appeal a copy of its employment contract with the beneficiary, executed in February 2009, in which the beneficiary's duties are described as follows: "Lead and train Taekwondo athletic team to compete in International/national/regional and state Taekwondo championship/competition."

Finally, the petitioner submits "a new schedule of activities and athlete participation" for the period 2009 through 2013, which indicates that the school will participate annually in the US Open, San Francisco World Taekwondo Festival, Choi's All American Open, University of California at Berkeley Taekwondo Tournament, and the American Taekwondo United National Tournament.

Upon review, the petitioner has not established that the beneficiary is coming to the United States to perform services which require an internationally recognized athlete or that he is coming solely to perform as such an athlete.

Section 214(c)(4)(A) specifically states that section 101(a)(15)(P)(i)(a) refers to an alien who "performs as an athlete" and "seeks to enter the United States. . . for the purpose of performing as . . . an athlete with respect to a specific athletic competition." Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984).

While the COMPETE Act opened the P-1 classification to certain coaches, the beneficiary does not meet the criteria set forth at section 214(c)(4)(A)(i)(III) of the Act, which limits P-1 classifications to coaches of teams or franchises that are located in the United States and members of a foreign league or association of 15 or more amateur sports teams. Regardless, the petitioner clearly seeks to classify the beneficiary as an athlete, who performs at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(I) of the Act.

Although the petitioner indicated that the beneficiary would be competing in local, state, regional, national and international competitions, the petitioner has also unequivocally indicated that the beneficiary will be serving as a coach and instructor for its organization. As noted above, several individuals who provided letters of support indicated the beneficiary's intention to serve as a Taekwondo instructor in the United States. Furthermore, the written contract between the petitioner and beneficiary submitted on appeal indicates that the beneficiary will "lead and train" its team. The petitioner has also consistently highlighted the beneficiary's credentials as a referee and instructor in the sport, evidence that would not be relevant to a claim that he will solely be competing in athletic events requiring an internationally recognized athlete.

With respect to the itineraries, the petitioner has submitted general schedules of events in which its school would participate. The petitioner has referred to the school and its students generally and has provided no evidence of the specific athletic competitions in which the beneficiary would participate.

Therefore, based on evidence submitted, the director appropriately concluded that the beneficiary would not be coming to the United States to participate in athletic events that require an internationally recognized athlete or *solely* to compete as such an athlete. Rather, the evidence indicates that the beneficiary will be a Taekwondo instructor in addition to any athletic competitions in which he may compete. There is no provision that would allow an alien to come to the United States individually as a P-1 coach other than the above-referenced statutory provision allowing P-1 classification of coaches who participate in certain qualifying amateur sports leagues or associations, or as a P-1 essential support alien accompanying a P-1 athlete or athletes. *See* 8 C.F.R. § 214.2(p)(4)(iv). The statute and regulations do not provide for P-1 classification of an individual who will serve as both a competitive athlete and coach/instructor. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that the beneficiary would 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. *See* 8 C.F.R. § 214.2(p)(4)(ii). As noted above, the director acknowledged the beneficiary's potential participation in the "National Championships of Choi's All American" and the "National Championship of American Taekwondo United," but determined that the petitioner failed to submit any evidence that the events are scheduled, that the beneficiary is scheduled to compete in them, or that the events require the participation of internationally-recognized athletes.

On appeal, the petitioner does not directly refer to the director's finding or address the deficiencies observed in the director's decision. The petitioner submits an updated list of events which includes two additional events, the US Open and the San Francisco World Taekwondo Festival. Again, the petitioner has not clearly

stated or provided evidence that the beneficiary will compete in these events, that the petitioner's organization has previously entered athletes in such competitions, or provided evidence of the entry requirements for such events, such that it could be determined whether the events require the participation of internationally-recognized athletes. 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)).

The AAO notes that, even assuming, *arguendo*, that the petitioner had established that the beneficiary would compete in the events and that such events require the participation of internationally-recognized athletes, the events appear to be one-day events held annually. Given that the petitioner has offered the beneficiary full-time employment to lead and train its team, the limited number of scheduled competitions further supports a conclusion that the beneficiary will primarily be engaged in instructing Taekwondo, rather than serving as a competitive athlete.

The petitioner has not submitted evidence on appeal to overcome the director's finding that the beneficiary would not 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. Accordingly, the appeal will be dismissed.

The third and final issue addressed by the director is whether the petitioner submitted an appropriate labor consultation as required by the regulations. The regulation at 8 C.F.R. § 214.2(p)(7)(ii) details the consultation requirements for P-1 athletes and entertainment groups as follows:

Consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in the case of a P-1 petition. . . . If the advisory opinion provided by the labor organization is favorable to the petitioner, it should evaluate and/or describe the alien's or group's ability and achievements in the field of endeavor, comment on whether the alien or group is internationally recognized for achievements, and state whether the services the alien or group is coming to perform are appropriate for an internationally recognized athlete or entertainment group. In lieu of the above, a labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

The petitioner did not complete item #7 of the O and P Classification Supplement to Form I-129, which requests that the petitioner indicate whether it has obtained the required written consultation, nor did it submit the required consultation with the initial evidence. Therefore, the director specifically instructed the petitioner to submit the consultation. The director denied the petition based on the petitioner's failure to submit the consultation in response to the RFE.

On appeal, the petitioner does not directly address this finding, nor does it submit any additional evidence that is clearly intended to fulfill this evidentiary requirement. The petitioner submits a "recommendation letter" from [REDACTED] United which is described as a "State Association of Taekwondo." [REDACTED] indicates that the beneficiary is "one of the most qualified instructors in the US" and "a qualified athlete in the domain of Taekwondo." He states that the beneficiary "will be an asset to this country

to popularize Taekwondo and educate our young generation to be great future citizens."

Even if this state organization qualified as an appropriate labor organization, the AAO notes that [REDACTED] does not indicate whether the beneficiary is internationally recognized for his achievements or state whether the services the beneficiary will perform in the United States are appropriate for an internationally recognized athlete. Furthermore, the director instructed the petitioner to submit a consultation in response to the RFE and the petitioner failed to do so. 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).

As the petitioner has not submitted the required labor consultation in compliance with 8 C.F.R. 214.2(p)(7)(ii), the petition may not be approved.

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. 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.