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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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D9.

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 16 2010

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

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer under a culturally unique program. The petitioner is a horse racing stable and the beneficiary is a horse trainer who currently holds a P-1 visa. The petitioner seeks to employ the beneficiary for a period of five years.

The director denied the petition on February 18, 2010, concluding that the petitioner did not submit evidence to establish that the beneficiary performs as an artist or entertainer or that he seeks to enter the United States solely to perform, teach or coach under a commercial or non-commercial program that is culturally unique. The director observed that the petitioner failed to identify any culturally unique component with respect to the beneficiary's proposed employment as a horse trainer. 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, the petitioner emphasizes that the beneficiary holds a horse trainer license in seven U.S. states, and indicates:

According to all evidence of Beneficiary, [the beneficiary's] professional background and outstanding performance along with 22 years experience in all equestrian and horse training and his relation in charge of training horses and supporting various international world class jockeys, such as [REDACTED] (winner of more than 6000 race), [REDACTED] (winner of more than 1000 races) and [REDACTED] (with over 3000 wins).

The petitioner asserts that the beneficiary is "a qualified international athlete trainer and he is eligible for P-3 visa." The petitioner indicated that additional evidence and supporting documents would be submitted to the AAO within 30 days. As of this date, no additional evidence has been received and the record will be considered complete.

Section 101(a)(15)(P)(iii) of the Act provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

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.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

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 denial of the petition. On appeal, the petitioner does not identify specifically any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. Although the petitioner states that it "disagrees" with the denial of the petition, it has not acknowledged or addressed the fundamental deficiencies that formed the basis of the director's denial. Specifically, the petition was denied because the petitioner submitted no evidence to establish how a horse trainer qualifies as a culturally unique performer or entertainer and because the petition was submitted without reference to or adherence to the evidentiary requirements for a P-3 artist or entertainer at 8 C.F.R. § 214.2(p)(6)(ii). As the petitioner still has not acknowledged these requirements on appeal, the appeal will be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

Upon review of the petition and evidence, it appears that the petitioner was unaware that the P-3 classification is reserved for culturally unique artists and entertainers. We note that the petitioner may have intended to request a P-1S classification for the beneficiary as essential support personnel, based on its claim that the beneficiary has experience "supporting various international world class jockeys." See 8 C.F.R. § 214.2(p)(4)(iv)(A) and (B).

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 as a basis for the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.