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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

Dq

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 23 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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, with a fee of $630. 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, 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 internationally-recognized athlete under section 101(a)(15)(P)(i)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(a). The petitioner states that it operates a show horse barn. It seeks to employ the beneficiary in the position of "Professional Show Horse Rider/Trainer" for a period of five years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is a qualifying athlete under section 214(c)(4)(A)(i) of the Act. Specifically, the director noted that the petitioner: (1) failed to submit evidence to satisfy at least two of the seven evidentiary criteria for internationally-recognized athletes pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*); and (2) failed to provide 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 the sport, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*). In denying the petition the director emphasized that the beneficiary's main role with the petitioner would be as a horse trainer rather than as a professional competitive rider, and as such he cannot qualify as a P-1 athlete.

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 even if the beneficiary's role is primarily as a horse trainer, he "can and does qualify for P-1 classification," as he is also a "talented rider." Counsel further states that "horse training is an athletic capability well within the notions of traditional sporting." Finally, counsel contends that the petitioner should be considered a major United States sports team and asserts that the beneficiary's offered compensation package is higher than those of the average horse trainer and thus commensurate with the beneficiary's international recognition. The petitioner submits additional evidence in support of the appeal.

I. The Law

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.

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."

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

(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 end 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. Discussion

A. *Services to be Performed in the United States*

The first issue addressed by the director is whether the beneficiary is a qualifying athlete under section 214(c)(4)(A)(i) of the Act, which provides P-1 classification to aliens who fall within one of the following categories: (1) internationally recognized athletes; (2) certain professional athletes; (3) certain athletes and 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; or (4) professional and amateur athletes who perform in theatrical ice skating productions.

As noted above, 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 petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary will be employed as a "Professional Show Horse Rider/Trainer." On the O and P Classification Supplement to Form I-129, the petitioner described the beneficiary's proposed duties as the following:

> Professional Show Rider/Trainer is to compete, ride, train, school and prepare horses on the international Grand Prix level as well as judge show horses on the national and international circuit. Also will assist in selecting prospects for Olympic class competitions and train and prepare these horses for international competitions, will also assist Grand Prix riders with horses faults and ailments that are detrimental to horses performance.

In a letter dated November 9, 2009, counsel for the petitioner stated:

> [The beneficiary] will act as the rider and trainer for show horses bound for top national and international competitions including Grand Prix, National Horses Trials, World Cup Qualifiers and the Olympic Games. He will assist with the supervision of the day to day exercise, training management, and the care of all the top show horses, valued in the millions of dollars.

In support of the petition, the petitioner provided an opinion letter fr American Warmblood Registry, who stated that "[the beneficiary] has shown he is one of the best in producing show horses for competition which allows the owners to compete at these levels."

With respect to the beneficiary's qualifications, the petitioner described his experience as a rider and trainer of horses that have won international prizes and submitted a number of testimonial letters from horse owners and trainers, who attest to the beneficiary's skills in maintaining and preparing show horses for competition. n, states that "[the beneficiary's] reputation as a horse trainer is of the highest order," and that he "has spent many years perfecting his skills under world-renowned trainers by preparing and maintaining top horses for international competition." Final states that horses the beneficiary has "worked with, trained and maintained have won many international accolades."

states that the beneficiary "is of outstanding merit and ability in his field of endeavor, as he is not only an accomplished rider, but is extremely proficient in the training and maintenance of Top Show Horses." states that the beneficiary "has gained a distinguished reputation in the way he prepares and maintains horses at top levels," and that he "has had the opportunity to work with the world's top trainers and riders."

The petitioner also submitted a letter from , a horse owner and breeder. She states that she has known the beneficiary for ten years and indicates that he "is an excellent horseman" who is gifted with both "advanced level horses" and young horses.

, a show jumping competitor, states that the beneficiary's reputation as a horse trainer is "of the highest order," and notes that he "has spent many years perfecting his skills under various world-renowned trainers by preparing and maintaining top horses for International Competition."

Finally, N indicates that the beneficiary worked for her from 1998 to 2001, during which time he was responsible for "preparing, riding and training young and top horses for international competition." further states that "horses that he has worked with have won many International acolades [*sic*], including Cathleen III who won the King George V Gold Cup and was short listed for the Olimpic [*sic*] Games."

The petitioner submitted several photographs of the beneficiary on horseback and with horses; however, none of these photographs depict the beneficiary dressed for competition as a show jumper. The petitioner did not submit any primary evidence of the awards and other accolades referenced in the testimonial letters, nor did it submit any other evidence related to the beneficiary's achievements or recognition as a competitive show horse jumper.

The director issued a request for additional evidence ("RFE") on December 2, 2009, in which he requested, in relevant part: (1) evidence to establish that the beneficiary is coming to the United States to participate in an internationally recognized athletic competition, event, performance, season, tournament, tour or exhibit; and (2) evidence that the beneficiary as an individual athlete has achieved international recognition in the sport

based on his own reputation, pursuant to the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*), or, alternatively, evidence that the beneficiary qualifies as a professional athlete as defined at section 204(i)(2) of the Act.

In response to the director's request that the petitioner submit evidence to establish that the beneficiary as an individual athlete has achieved international recognition, counsel stated that "the evidence at hand already establishes this fact." Counsel emphasized that the petitioner submitted recommendation letters from persons who are "extremely familiar with international equestrian competitions." The petitioner provided quotes from the above-referenced letters.

The petitioner also submitted evidence of results achieved by the petitioner's horses in national and international competitions held in France and Italy. Counsel asserted that these rankings "should qualify both as '[e]vidence that the beneficiary or team has received a significant honor or award in the sport' and of the team's international ranking." Counsel further stated that the advisory opinion from the American Warmblood Registry qualifies as a statement from a governing body in the field supporting the petitioner's claim that the beneficiary is internationally recognized as a horse trainer and rider.

In addition, the petitioner provided extensive result listings for a rider named who appears to ride the petitioner's horses in competition. The petitioner did not explain the significance of this evidence in establishing the beneficiary's international reputation as an individual athlete.

Finally, the petitioner submitted an additional letter from stated that the beneficiary "is a very responsible and well respected trainer [of] young horses in [W]ellington, Florida."

The director denied the petition on March 8, 2010, determining that the petitioner failed to establish that the beneficiary is qualified as an internationally-recognized athlete. The director acknowledged the petitioner's arguments made in response to the RFE as follows:

> The rankings of the petitioner's various horses and riders [do] not show that the beneficiary has received [a] significant honor or award in the sport as none of the documents provided name the trainers of these horses or riders and none show that the beneficiary was the rider. Furthermore, the term "team" in the context of the P-1A regulations refers to the alien or their foreign team, not the petitioner's team.

The director therefore concluded that the petitioner had failed to submit evidence satisfying at least two of the seven evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*). Finally, the director observed that the beneficiary's main role with the petitioner is that of a horse trainer, not as a professional competitive rider. As such, the director determined that "he cannot qualify as a P-1A athlete as he is not entering the U.S. solely for the purpose of performing as an athlete with respect to a specific athletic competition."

On appeal, counsel for the petitioner asserts that the petitioner has established the beneficiary's qualifications as an internationally-recognized athlete "above and beyond the minimum requirements." Specifically, counsel claims that the beneficiary has participated to a substantial extent in a prior season with a major U.S.

sports league, based on "his role in the successful international competition with [the petitioner]." Counsel asserts that the petitioner should be regarded as a "major U.S. sports team." Counsel further contends that the advisory opinion from the American Warmblood Registry qualifies as a statement from a governing body or recognized expert in the field and supports the petitioner's claim that the beneficiary is internationally recognized as a horse trainer and rider.

In addition, counsel asserts that the testimonial evidence should be considered "substantial documentation of [the beneficiary's] 'significant honor or award in the sport.'" Finally, counsel states that the petitioner "also provided evidence showing the rankings of riders employing horses trained by [the beneficiary] in international competition," and contends that "this should be treated as evidence of [the beneficiary's] international ranking."

Finally, counsel addresses the director's finding that the beneficiary cannot qualify as a P-1 nonimmigrant because he is primarily a horse trainer, rather than a professional competitive rider. Counsel contends that "if [the beneficiary's] role is primarily as a horse trainer, he can and does qualify for P-1 classification, and [the beneficiary] is a talented rider, as well." Counsel provides a dictionary definition of "athlete" and asserts that the beneficiary falls within that definition. Counsel concludes by stating that it would be "grossly unfair and inconsistent with the plain meaning of the statute" to exclude the beneficiary from P-1 classification.

Upon review, the AAO concurs with the director's determination that the beneficiary does not qualify any under of the categories of athletes eligible for P-1 classification, nor has the petitioner established 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. Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I). Further, the evidence does not establish that the beneficiary is coming to the United States to perform services which require an internationally recognized athlete. 8 C.F.R. § 214.2(p)(4)(1)(A).

In the equestrian sport of show jumping, only an internationally-recognized competitive rider would be considered a qualifying athlete for the purposes of this classification. The petitioner has not provided any primary evidence to establish that the beneficiary has competed or will compete in any equestrian events as a rider. 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 fact that the beneficiary is a highly-regarded trainer who also happens to be a talented rider is insufficient to establish his eligibility absent evidence that the beneficiary is internationally recognized as a competitive rider and evidence that he intends to compete as a rider in the United States.

Further, the director correctly determined that the beneficiary cannot rely on the reputation of the petitioning organization, or the reputation of individual riders or horses associated with the organization, to establish the beneficiary's eligibility as a member of an internationally-recognized "team." Even if it were established that the petitioning horse show barn could be considered a U.S. sports team, the regulations specifically state that 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 based on his or her reputation. 8 C.F.R. § 214.2(p)(4)(ii)(B). The beneficiary is not listed by name in any competition results achieved by the petitioner or the petitioner's horses or riders.

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 petitioner has consistently stated that the beneficiary will be employed as a "Professional Show Horse Rider/Trainer" the overwhelming majority of the submitted evidence identifies the beneficiary as a horse trainer who rides show horses for training purposes. Therefore, the AAO concurs with the director that the beneficiary's duties as described at the time of filing are those typically performed by a trainer rather than a competitive athlete in an equestrian sport. The beneficiary's duties may require some athletic ability not required of all horse trainers, but he is nevertheless a member of the training team and not an athlete who will compete in athletic events for P-1 purposes. The beneficiary is clearly well-respected as a trainer of thoroughbred horses and is claimed to have worked with several horses that have achieved notable prizes and awards. However, the awards won by these horses in competitions are not directly attributable to the beneficiary and do not establish his eligibility as an internationally-recognized athlete. The petitioner has not provided evidence to establish that the beneficiary qualifies as an athlete under section 214(c)(A)(i)(II) or (III) of the Act. Accordingly, the appeal will be dismissed.

B. Tendered Contract

The remaining issue addressed by the director is whether the petitioner submitted 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, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*).

The petitioner, which described the nature of its business as a professional show barn and farm, submitted a copy of its contract with the beneficiary which indicates that he will receive $715 per week for horse show competitions, plus per diem and prize money earned, as well as compensation for housing, travel expenses and bonuses, during the international horse show seasons for the time period from January 15, 2010 through January 10, 2015.

In the RFE dated December 2, 2009, the director instructed the petitioner to provide evidence of 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.

In response, counsel referred to the previously submitted contract and stated that the petitioner is "an internationally recognized competitor."

The director denied the petition, concluding that the petitioner had failed to submit evidence to meet the requirement at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*). The director acknowledged the submitted contract, but determined that the petitioner "submitted no supporting evidence that this contract qualifies as a tendered contract commensurate with international recognition in the sport."

On appeal, counsel asserts that the average salary for a horse trainer in the Miami, Florida metropolitan area is $32,294, less than the $37,180 annual salary offered to the beneficiary. Counsel further notes that the beneficiary's compensation will also include living expenses and a portion of prize money, such that "his actual earnings will far outstrip the average trainer and rider."

In addition, counsel asserts that the petitioner should be regarding as "a major U.S. sports team," as it "competes in horsemanship events all over the world."

Upon review, the record does not indicate that the beneficiary will be competing on a major U.S. sports team or for a major U.S. sports league and thus is not required to submit a contract from such a team or league. 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. 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. The AAO can find no basis for considering the petitioning equestrian center 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.

The petitioner has submitted some evidence to establish that the beneficiary will earn a salary that is higher than the "average" horse trainer employed in the same geographical area of employment. However, as discussed above, the petitioner has not established that the beneficiary will be performing as an "athlete" within the meaning of this visa classification. Therefore, the petitioner's contract with the beneficiary is not one which is commensurate with international recognition as an athlete in the equestrian sport. Accordingly, the appeal will be dismissed for this additional reason.

The AAO acknowledges that a prior P-1 petition filed on behalf of the beneficiary was approved. Although the petitioner indicates that it currently employs the beneficiary, the AAO notes that, according to the evidence of record, the prior petition was filed by a different petitioner. The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. A prior approval does not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Regardless, it is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). USCIS does not consolidate previously filed petitions and does not have access to them at the time of adjudication. *See Hakimuddin v. DHS*, Slip Opinion, 2009 WL 497141 (S.D. Tex. Feb. 26, 2009).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof. *See* section 291 of the Act. Here, the petitioner has not established that the beneficiary would be coming to the United States to perform as an athlete or that he is internationally-recognized as an athlete based on his reputation.

This denial does not preclude the petitioner from filing a new visa petition, supported by the required evidence, in an appropriate classification.

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 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

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.