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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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 13 2010

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

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

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 \$585. 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, 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 internationally-recognized 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). The petitioner, a martial arts academy, seeks to employ the beneficiary as a martial arts athlete for a period of three years.

The director denied the petition based on two separate grounds, concluding that the petitioner: (1) 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); and (2) 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).

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 asserts that the director erroneously disregarded counsel's explanations regarding contracts in the field of mixed martial arts. Counsel further contends that the submitted evidence satisfies at least three of the evidentiary criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner re-submits evidence and provides new 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)(1)(ii)(A)(1) provides that a P-1 classification applies to an alien who is coming temporarily to the United States to perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

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

A. Tendered Contract

The first 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)(I).

The petitioner, a martial arts academy with two employees, indicates that it intends to directly employ the beneficiary and manage his professional career as a martial arts fighter. The petitioner states that the beneficiary will compete for its academy and teach his techniques to the academy's students.

In support of the petition, the petitioner provided a copy of its three-year management agreement with the beneficiary, which indicates that it will "assist Athlete in the development, negotiation, organization and administration of income-producing opportunities" and "consult with and advise Athlete regarding the planning and management of Athlete's career and related business affairs." In return for these services, the petitioner will receive 20 percent of the beneficiary's earnings from prize winnings and endorsements/sponsorships.

The petitioner indicated that the beneficiary will be competing in mixed martial events for [REDACTED] and [REDACTED] approximately every two months, and also participating in various grappling and Jiu Jitsu championship events.

The director issued a request for evidence (RFE) on August 10, 2009, in which she instructed the petitioner to submit 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. The director also requested 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.

In a response dated September 7, 2009, the petitioner stated:

Normally, in the field of fighting the contract with the fighting events are only execute[d] after the fighting arrangements are set. In the field of martial arts the contract for participation in championships are executed according to previous fighting events. The fighters are qualified or not to participate according to the results of previous events. As explained above, the contracts will depend of [sic] several factors and cannot be produced in advanced [sic]. In this specific case, the only contract required is between the agent, [the petitioner] as a manager, and the beneficiary. . . .

The petitioner re-submitted its management agreement with the beneficiary, along with a pro fighter contract for a previous "[REDACTED]" mixed martial arts event in which the beneficiary competed on [REDACTED]

The director denied the petition on September 19, 2009, 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). In denying the petition, the director noted that "[redacted] is an internationally recognized 'league' in the sport of mixed martial arts." The director further observed that "it appears that written contracts are customary for athletes to participate in that league." Finally, the director noted that the petitioner had not submitted evidence to establish that it is considered to be "a major United States sports league or team."

On appeal, counsel for the petitioner reiterates that the petitioner submitted a tendered contract in the form of its management agreement with the beneficiary. Counsel asserts that the director "mistakenly states that [redacted] is an internationally recognized league and that contracts are customary for athletes that participate in that league." Counsel states that [redacted] is a business run by [redacted] which hires fighters and sells fights to different television stations. Counsel asserts that the beneficiary will fight in "different internationally recognized competitions." The petitioner submits information obtained from [redacted]'s public website.

Upon review, counsel's assertions are persuasive. 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. Furthermore, the petitioner has not indicated that the beneficiary will be a [redacted] fighter. Rather, the petitioner indicates that the beneficiary will compete in prize fights sponsored by mixed martial arts fight promoters [redacted] and [redacted] as well as non-commercial martial arts competitions such as the World, U.S. and Pan American Jiu Jitsu championships. The petitioner has provided a copy of its three-year agreement with the beneficiary, as well as evidence of the beneficiary's past contracts for fights that were scheduled on a per event basis. The director's requirement that the petitioner submit a [redacted] contract and/or evidence that the petitioner is a major U.S. sports team was misguided.

Accordingly, the petitioner will withdraw the director's decision with respect to this issue.

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 set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner has claimed that it can meet the criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(ii), (iv), (v) and (vii). As such, the remaining criteria will not be addressed in this decision.

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. The petitioner claims that the beneficiary meets this criterion based on participation in internationally-recognized competitions such as the [redacted]; however, it has neither claimed nor provided evidence that the beneficiary has

ever competed in his sport as a member of a national team. Accordingly, the petitioner has not submitted evidence to satisfy 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 from [REDACTED], president of the [REDACTED]. [REDACTED] indicates that he has reviewed the beneficiary's "portfolio, work and documentation" and "can confirm that he is an international recognized martial arts fighter with a large potential to be one of the best in his field." [REDACTED] further states that the beneficiary "received important awards in his home country Brazil and also participated in international championships such as [REDACTED] and [REDACTED]"

The director determined that the petitioner failed to establish that [REDACTED], as president of a state [REDACTED] is an official of the governing body of the beneficiary's sport. The director noted that the petitioner provided no evidence that the [REDACTED] is recognized as the governing body of the sport.

On appeal, the petitioner re-submits the letter from [REDACTED] and asserts that the director failed to consider the evidence presented.

Upon review, the AAO concurs with the director that the petitioner provided no evidentiary basis for its claim that the [REDACTED] is the governing body of this sport in the United States. 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)). Given the petitioner's claims that the beneficiary will compete in national, Pan American and World Championship-level events in Jui Jitsu, it is reasonable to conclude that there exists national, regional and international governing bodies. Therefore, the petitioner's evidence does not meet the plain language of the regulatory criterion.

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 a letter from [REDACTED] and executive producer of the [REDACTED] television show. He indicates that [REDACTED] airs in most U.S. markets on [REDACTED], can be viewed in 13 different countries, and is internationally recognized in the field of mixed martial arts. With respect to the beneficiary, [REDACTED] states:

In the past 7 years, I have seen many athletes try their hand at [REDACTED]. Few, if any, have had as much potential in becoming a superstar in the sport as [the beneficiary]. He is a special talent, and will be able to take this sport as far as he likes. He will, no doubt, be among the top in his weight class in little time.

The director determined that "no evidence was submitted to satisfy this criterion." On appeal, counsel asserts that the director failed to consider Mr. Stidham's letter and re-submits it for review.

Upon review, the reference letter from [REDACTED] does not satisfy this criterion. The regulation at 8 C.F.R. § 214.2(p)(2)(iii)(B) provides that affidavits written by recognized experts "shall specifically describe the alien's recognition and ability or achievement in factual terms," and also "set forth the expertise of the affiant and the manner in which the affiant acquired such information." Furthermore, the plain language of this evidentiary criterion requires that the evidence "detail how the alien . . . is internationally recognized." The letter from [REDACTED] describes the beneficiary as a potential superstar and special talent but does not detail how he is currently internationally recognized in mixed martial arts or describe his recognition or accomplishments in the sport in factual terms. The letter does not describe how the beneficiary's achievements are renowned, leading, or well-known in more than one country.

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii) requires the petitioner to submit evidence that the alien or team has received a significant honor or award in the sport. In its initial letter, the petitioner stated that the beneficiary "has been competing in international[ly] recognized events such as [REDACTED] in the [REDACTED]

At the time of filing, the petitioner submitted a letter from [REDACTED] who states that he is the 2006 [REDACTED] indicates that the beneficiary fights as a member of his outfit, "[REDACTED]" With respect to the beneficiary's honors or awards in the sport, [REDACTED] states:

[The beneficiary] already has multiple victories here in the USA in both [REDACTED]

The petitioner also submitted several articles regarding the beneficiary. The first is an article from the online edition of [REDACTED] magazine, dated January 29, 2009. The article states that the beneficiary is preparing to travel to Lisbon, Portugal to compete in the [REDACTED]. A second article from the website [REDACTED] is dated February 20, 2009. The article states that the beneficiary had an [REDACTED] fight on that date at [REDACTED]

A third article, also published at the website [REDACTED] is dated April 28, 2008. The article states that the beneficiary fought on behalf of [REDACTED] at the [REDACTED] [REDACTED] and won the fight, his second, by unanimous decision.

Another article, from the website of [REDACTED] magazine, dated December 18, [REDACTED], states that the beneficiary "has been on a winning streak in submission grappling and [REDACTED]." The article describes the beneficiary as a "two-time [REDACTED] champion" and first-place finisher at "[REDACTED]," a submission grappling event held on December 13, [REDACTED] in [REDACTED] where he "submitted all his opponents winning his weight category in Brazilian jiu jitsu and also in submission grappling." The article includes a photograph of the beneficiary wearing two medals and holding a belt and two trophies. However it is unclear when or where the photograph was taken.

Another article from [REDACTED] magazine's website was written regarding the beneficiary's main event [REDACTED] fight for [REDACTED] on November 14, 2008, which the beneficiary won by submission in the second round. The article indicates that the beneficiary "also holds the [REDACTED] belt one of the biggest [REDACTED] competition in the world."

In addition, the petitioner submitted an interview with the beneficiary that was published on the website of [REDACTED]. The beneficiary indicates that he did not compete at the [REDACTED] [REDACTED] because he was ill. The beneficiary mentions in the interview that since coming to the United States he is a two-time [REDACTED] champion, champion of "[REDACTED]" (a casino event), winner of "[REDACTED]" a grappling event held in [REDACTED], and winner of 3 [REDACTED] fights.

Counsel, in responding to the director's RFE, noted that [REDACTED] is the largest circulated fighting magazine in [REDACTED] and that the articles, along with the letter from [REDACTED], evidence the beneficiary's awards and prizes.

The director found the evidence insufficient to establish that the beneficiary has won a significant honor or award in the sport. The director noted that the petitioner failed to submit evidence to support its assertion that the magazines are largely circulated, and observed that, while the beneficiary is named in the articles, the significance of the honors and awards he may have received is not proven. Finally, the director observed that the petitioner failed to provide a specific list of awards the beneficiary is claimed to have received and copies or photographs of the awards themselves.

On appeal, the petitioner submits a letter from [REDACTED] president of the [REDACTED] [REDACTED], who confirms that the beneficiary has participated in [REDACTED] international events and won the following awards: [REDACTED]

[REDACTED] Counsel refers the AAO to the previously submitted articles for additional evidence of the beneficiary's victories.

Upon review, the AAO notes that the record before the director included no direct evidence of the beneficiary's actual prizes or awards, such as copies of the awards themselves or official results from the competitions he is claimed to have won. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The director correctly determined that the petitioner did not submit sufficient evidence to satisfy this criterion.

The evidence submitted on appeal confirms that the beneficiary has two [REDACTED] titles. However, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the evidence from NAGA in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Even if the AAO considered the newly submitted evidence, the petitioner's evidence would still only meet one of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2), of which two are required to establish eligibility.

III. Conclusion

In summary, as discussed above, 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 as a martial arts athlete. Accordingly, the appeal will be dismissed.

This denial does not preclude the petitioner from filing a new nonimmigrant visa petition, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

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

ORDER: The appeal is dismissed.