

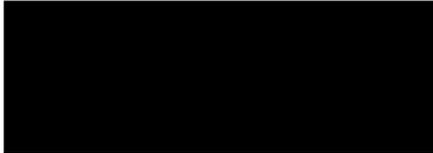
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

**PUBLIC COPY**



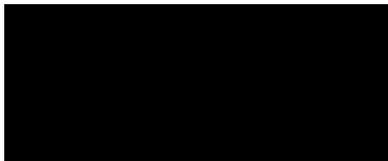
D9

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 14 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 under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), as an internationally-recognized athlete. The petitioner, a tennis and health club operator, seeks to employ the beneficiary as a tennis coach. The beneficiary was previously granted P-1 status, and the petitioner seeks to extend his status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary as an internationally recognized athlete competing in a specific event or events or as a member of an athletic team. The director observed that the petitioner seeks to employ the beneficiary principally as a tennis coach and that competitive tennis would be ancillary to his primary job duties. The director noted that P-1 classification is not available to aliens seeking employment as coaches or instructors at an academy or school devoted to the sport.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the beneficiary was previously granted P-1 status to work for the same petitioner as a tennis coach. Counsel asserts that the "Form I-129 was denied simply because of different interpretation by the adjudicator of the INA regulations which remain unchanged." Counsel requests that the petition be approved.

## **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.

## **II. The Issue on Appeal**

The sole issue addressed by the director is whether the petitioner established that the beneficiary is coming to the United States solely for the purpose of competing in an athletic competition or competitions which require participation of an athlete that has an international reputation. 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 January 22, 2009. The petitioner stated on the Form I-129 that the beneficiary will "give tennis lessons" and "teach advanced techniques of tennis lessons." In its letter submitted in support of the petition, the petitioner stated that it has employed the beneficiary as a tennis coach for the past three years and that "he has demonstrated his exceptional ability in coaching our students."

The director issued a request for additional evidence ("RFE") on March 31, 2009. The director did not specifically request additional evidence to address whether the beneficiary would be performing solely as an athlete with respect to specific athletic competitions; however, the director did request evidence that is relevant to this issue, including copies of any written contracts between the petitioner and beneficiary, an explanation regarding the nature of the events or activities and an itinerary for such events or activities.

In response, the petitioner submitted a copy of its employment contract with the beneficiary, which specifies that the beneficiary "will only work for the employer in the capacity of a Tennis Coach." Under the terms of the contract, the beneficiary is responsible "to coach tennis students by analyzing their performances and instructing them in areas of deficiency," to "teach tennis techniques of serving, backhand, net play, etc.," and to "organize tennis tournaments."

The petitioner submitted a list of upcoming tournaments in which the beneficiary's students would be competing. The petitioner also provided evidence that the beneficiary is registered as a player in the "USTA BJK NTC 2009 Men's Open Singles Sectional" tournament.

The director denied the petition on July 7, 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 petitioner seeks to employ the beneficiary as a coach or instructor, while participation in athletic competition would be ancillary to his primary duties.

On appeal, counsel for the petitioner relies on the approval of a previous petition granting the beneficiary P-1 status to serve as a tennis coach for the petitioner. Counsel asserts that the instant petition "was denied simply because of different interpretation by the adjudicator of the INA regulations which remain unchanged."

Upon review, counsel's assertions are not persuasive. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, 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).

Upon review of the evidence in the instant record, we conclude that the beneficiary will be employed by the petitioner solely as a tennis coach, according to the terms of his contract, and counsel does not contest this issue on appeal. Although counsel expresses his opinion that the statute and regulations governing P-1 athletes are open to different interpretations, the AAO disagrees. Section 214(c)(4)(A) of the Act 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." The P-1 regulations explicitly limit classification of internationally recognized athletes to those who are coming to the United States to perform solely as competitive athletes.

Counsel provides no citations to the statute or regulations in support of his assertion that a different interpretation should be made. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that in other nonimmigrant categories, USCIS consistently makes a distinction between athletes and coaches, *See Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (noting that legacy INS had explicitly stated that the "area" of athletics should not be considered as a whole to include every occupation involving athletics). The P nonimmigrant category itself distinguishes between athletes and coaches by providing two different classifications: P-1 for athletes and P-3 for support personnel, including coaches. P-1 classification can only be granted to coaches of certain teams or franchises located in the United States which are also members of a foreign league or association of 15 or more amateur sports teams. Section 214(c)(4)(A)(i)(III) of the Act.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) provides for the classification of an essential support alien who is an integral part of the performance of a P-1 athlete or athletic team. While P-1 classification is available to coaches who qualify as essential support aliens, the petitioner does not assert, nor does the record demonstrate, that the beneficiary would be coming to the United States as an essential support worker accompanying a P-1 athlete or athletes. The petitioner did not seek to classify the beneficiary as an essential support alien or as a coach of a U.S. team or franchise that is a member of a foreign league or association of 15 or more amateur sports teams.

The petitioner has not demonstrated that the beneficiary, as a tennis coach, is coming to perform as an athlete at an internationally recognized level of competition, nor does it demonstrate that he will be coming to perform as a P-1 nonimmigrant coach because he will not be working in a support relationship with an individual P-1 athlete or P-1 athletic team. 8 C.F.R. § 214.2(p)(4)(iv). There is no applicable provision that would allow an alien to come individually as a P-1 coach at a tennis club.

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). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a prior nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the evidence of ineligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approval by denying the instant petition. 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.

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.