

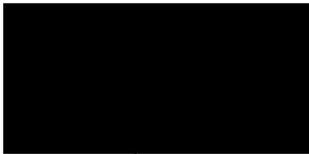
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: **OCT 28 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. 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, 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)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(b). The petitioner is engaged in the thoroughbred training and horse racing business. It seeks to employ the beneficiary in the position of "Thoroughbred Professional Rider / Athlete" for a period of three years. The beneficiary is currently in the United States in H-2B status.

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. The director observed that the beneficiary is not a jockey who races horses in competitive athletic events, but rather a rider responsible for thoroughbred training and conditioning. The director determined that, as such, the beneficiary does not qualify as an internationally recognized athlete or as a professional athlete under the Act.

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 petitioner has clearly and consistently stated that the beneficiary would be preparing and maintaining horses to compete in races and that "it was never mentioned or requested that beneficiary to be the actual competitor riding the horse during the race." Counsel asserts that the petitioner provided ample documentation to substantiate its claim that the beneficiary "has achieved international recognition as a professional rider/athlete."

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:
 - (I) 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. *Services to be Performed in the United States*

The sole 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 a member 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 "thoroughbred professional rider/athlete." In a letter dated February 13, 2009, the petitioner described the beneficiary as a "Professional Athlete Rider and Trainer," who will "train and participate in competitions both in the United States and abroad." The petitioner indicated that the beneficiary "has already achieved recognition (national and international) as a Professional Rider and has won numerous competitions."

The petitioner provided its contract of employment with the beneficiary, in which it described the beneficiary's proposed duties as follows:

- Professionally Rides racehorses to exercise and condition them for racing;
- Professionally Rides racehorse during workout and training races following specific instructions of training personnel;
- Informs training personnel of horses' temperament, peculiarities, and physical condition as demonstrated during exercise so that training plans can be modified to prepare horse for racing;
- Exercises racehorses to maintain their physical and mental health;
- Conduct training programs in order to develop and maintain desired horse behaviors for competition purposes;
- Evaluate horses in order to determine their temperaments, abilities, and aptitude for training and racing;
- Feed and exercise horses, and provide other necessary care such as cleaning and maintaining holding and performance areas;
- Observe horses' physical conditions in order to detect illness or unhealthy conditions requiring medical care;
- Train and rehearse horses using knowledge of breed characteristics, training methods, performance standards, and the peculiarities of each animal;

- Train horses or other equines for riding, harness, show, racing, or other work, using knowledge of breed characteristics, training methods, performance standards, and the peculiarities of each animal;
- Keep records; documenting horses' health, diet, and behavior.
- Place tack or harnesses on horses in order to accustom horses to the feel of equipment;
- Retrain horses to break bad habits, such as kicking, bolting, and resisting bridling and grooming;
- Talk to and interact with horses in order to familiarize them to human voices and contact;
- Use oral, spur, rein, and/or hand commands in order to condition horses to carry riders/jockeys – if necessary; and
- Any other related duties as necessary.

With respect to the petitioning organization, the evidence included photographs of winning horses that were trained by the petitioner, and ridden by various jockeys.

In support of the petition, the petitioner provided an opinion letter from [REDACTED], who states that he is supporting the beneficiary's "application for P-1 Professional Assistant Trainer." [REDACTED] describes the beneficiary as "an expert Trainer with irreplaceable skills in developing young horses, training mature racing horses whether they are of difficult or normal temperament."

With respect to the beneficiary's qualifications, the petitioner submitted copies of his photo identification cards issued by New York, New Jersey, Maryland, Pennsylvania, Kentucky, California, Delaware and Virginia racing commissions and associations. The beneficiary is identified as an "assistant trainer" or "stable employee" on each identification card. The petitioner also submitted two newspaper articles, presumably from Mexican publications, which mention the beneficiary's work as a thoroughbred horse trainer.

Finally, the petitioner submitted a number of testimonial letters from thoroughbred trainers and jockeys, who attest to the beneficiary's skills in maintaining and preparing horses for competition. [REDACTED], a professional jockey, states that the beneficiary "has experience in riding and training racing horses for many years," and "is able to ride and teach racing horses to go through the various conditions of the track."

Trainer [REDACTED] states that the beneficiary "has spent 15 years training and maintaining Thoroughbred horses that have won major awards, important prizes and recognitions," and "has proven his skills to properly prepare, maintain, challenge and train valuable racing horses for the rigors of competition."

The petitioner also submitted a letter from [REDACTED] a professional trainer, who states that the beneficiary, as a professional rider, "has trained and maintained Stake Winning horses which have won International awards and recognition." He indicates that the beneficiary "can adapt to the physical and mental needs of both younger and older racing horses, and impart to the horse a confidence that the horse will need to improve mentally and physically and win races."

Professional trainer [REDACTED] states that the beneficiary "has excellent skills in riding and training

██████████ racing horses that have on many awards and prizes," and "is able to ride racing horses and teach the horses to go through the various conditions of the track."

██████████ a professional jockey, states that the beneficiary "has demonstrated his ability to professionally ride and train racing horses which have won important prizes and awards," and that he has a "solid record of experience and knowledge about Thoroughbred racing horses."

The petitioner submitted a letter from ██████████ a professional trainer, who states that the beneficiary "has skilled and maintained the horses that have won important prizes, recognitions and awards for more than fifteen years," and "is able to understand the trainer's instructions about how far to jog and gallop a racing horse, and how fast and far to work a horse."

The petitioner also submitted several letters from individuals from Mexico, with English translations, recommending the beneficiary as an excellent horse trainer.

The director issued a request for additional evidence ("RFE") on April 7, 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.

In response, the petitioner stated that the beneficiary "will participate in numerous upcoming events and competitions in the United States on behalf of [the petitioner] such as the world renowned the Haskell Invitational which is a Grade 1 event as well as other prestigious events." The petitioner further stated that the beneficiary "has proven his skills to properly prepare, maintain, challenge and train valuable racing horses for the rigors of competition." The petitioner also re-submitted the previously provided evidence, along with an additional letter from ██████████ the petitioner's owner, in which the beneficiary is described as a "professional assistant trainer."

The director issued a second RFE on August 6, 2009, in which he once again requested evidence that the beneficiary, as an individual athlete, has achieved international recognition in the sport of thoroughbred horseracing based on his own reputation. The director also requested, alternatively, evidence to establish that the beneficiary qualifies under section 214 (c)(4)(A)(i)(II) or (III) of the Act, either as a professional athlete or as an athlete or coach in a qualifying international amateur sports league.

In response, the petitioner submitted a letter from ██████████ a professional jockey, who states that he knows the beneficiary as a professional assistant trainer who "has proven his skills to properly prepare, maintain, challenge and train valuable racing horses for the rigors of competition." The only other new documentation submitted included racing programs from Mexico in which the beneficiary is identified as a trainer for horses competing in races at *Hipodromo de Las Americas*.

The director denied the petition on November 6, 2009, concluding that the beneficiary does not qualify as a P-1 athlete pursuant to section 214(c)(A)(i)(I), (II) or (III) of the Act. Specifically, the director noted that while the beneficiary provides critical essential support services as a trainer, he is not a jockey and therefore not "an athletic competitor involved in the actual racing of thoroughbred horses."

On appeal, counsel for the petitioner asserts that the petitioner never claimed that the beneficiary rides horses in competitive races. Rather, the petitioner contends that the beneficiary is nevertheless eligible based on his role as a professional rider of horses that compete in national and international competitions, and objects to the director's conclusion that the beneficiary will be a "trainer." The petitioner re-submits much of the documentation that was previously provided in support of the petition and in response to the director's requests for evidence.

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). As noted by the director, the only individuals who provide services as athletes with respect to the sport of thoroughbred horseracing are jockeys.

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 rider/athlete" there are many references to the beneficiary throughout the record as a "trainer" and "assistant trainer." 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 the sport of thoroughbred horseracing. In fact, most of the duties included in the beneficiary's job description were taken almost verbatim from the O*Net entry describing the occupation of "Animal Trainers," which includes horse trainers.¹ 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 has 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 neither claimed nor presented 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.

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

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 petition is denied.

¹ See "Details Report for: 39-2011.00 – Animal Trainers" (accessed on October 25, 2010).