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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

PUBLIC COPY

[REDACTED]

Dg

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:

[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. 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 director denied the petition, concluding that the petitioner failed to establish that 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:
 - (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. *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 November 12, 2008, the petitioner described the beneficiary as one who "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;
- 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.

The petitioner submitted a number of testimonial letters from thoroughbred trainers and jockeys, who attest to the beneficiary's skills in performing these types of duties. For example, [REDACTED] describes the beneficiary as a "professional exercise rider" who is "able to ride racing horses and teach the horses to go through the various conditions of the track." She states that the beneficiary "has excellent skills in riding and training racing horses that have won many awards and prizes."

[REDACTED] describes the beneficiary as "an Athlete and Professional Rider," who "is able to understand and carry out the trainer's instructions about how far to ride a horse." [REDACTED] a professional jockey, states that the beneficiary is a professional rider who "has skilled and maintained Thoroughbred racing horses that have won important prizes, recognitions and awards."

The petitioner also submitted a letter from [REDACTED] a professional jockey, who knows the beneficiary as "an expert rider of racing horses" who has "proven his skills to properly prepare, maintain, challenge and train valuable racing horses for the rigors of competition." The petitioner submitted similar letters from professional jockeys [REDACTED].

Finally, the petitioner submitted a certificate from the "[REDACTED]," which states that the beneficiary has "belonged to our union for a period of 20 years, working as a trainer (rider)."

The director issued a request for additional evidence 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 as a Professional Rider/Athlete, in national and international athletic competitions and events such as the world renowned [REDACTED], [REDACTED], [REDACTED], and [REDACTED] as well as other prestigious events." The petitioner 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 submitted an advisory opinion letter from [REDACTED] states that "horses schooled by [the beneficiary]" have competed in prestigious events, and that the beneficiary "has spent many years perfecting his skills on horses he has trained, worked with, and maintain [sic] have received international prizes and recognition."

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 based on his own reputation. The director also requested, alternatively, evidence to establish that the beneficiary qualifies as an athlete or coach under section 214(c)(4)(A)(i)(II) or (III) of the Act 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 [REDACTED] who states that horses the beneficiary has worked with and maintained have won international awards, important prizes and recognition, including the horses [REDACTED] and [REDACTED]. As evidence that the beneficiary "has participated in international competition," the petitioner submitted photographs of the beneficiary "riding and preparing the Thoroughbred racing horses [REDACTED] and [REDACTED] for trainer [REDACTED]. The petitioner also submitted copies of four [REDACTED] newspaper articles in which the beneficiary's role in preparing the racehorse [REDACTED] for competition is mentioned.

The director denied the petition on December 15, 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, he is not "an athletic competitor involved in the actual racing of thoroughbred horses."

On appeal, counsel for the petitioner asserts that it 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 professional rider of horses that compete in national and international competitions, and is not 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 thoroughbred horse races 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" and not as a "trainer," 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 as an exercise rider may require athletic abilities not held by all horse trainers, but he is nevertheless a member of the training team and not an athlete who will compete in events for P-1 purposes.

The beneficiary is clearly well-respected as an exercise rider for thoroughbred horses and has worked with several horses that have achieved national and international 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" <<http://online.onetcenter.org/link/details/39-2011.00>> (accessed on October 25, 2010).