

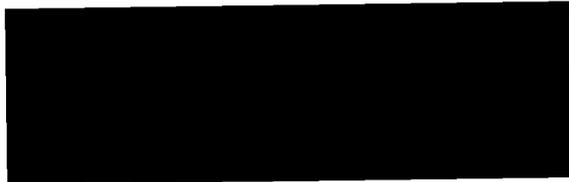
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D9

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: **SEP 15 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 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), for a period of two years. The petitioner, a Judo institute, seeks to employ the beneficiary temporarily in the United States as a Judo instructor and athlete.

The director denied the petition, concluding that the petitioner failed to establish 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.

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 incorrectly applied the P-1 standard of eligibility. Specifically, counsel asserts that "a reading of the statute while maintaining its intent allows for a grant of P-1 status for an alien whose sole purpose *with respect to a* specific athletic competition is performance as an athlete." Counsel asserts that the beneficiary is expected to compete in 40 events over two years and would be performing solely as an athlete "with respect" to such events. Counsel further argues that the director erred by failing to request evidence with respect to this issue prior to denying the petition.

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.

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 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 May 4, 2009. The petitioner stated on the O and P Classification supplement to Form I-129 that the beneficiary will "teach and compete at an elite level in the sport of Judo." In its letter submitted in support of the petition, the petitioner discussed the beneficiary's credentials as a Judo athlete and stated that the beneficiary, "in addition to his prowess as a competitor," is "an extremely valuable coach." The petitioner indicated that the beneficiary would be compensated for both his "coaching and competitive roles."

According to the evidence provided by the petitioner, it operates as a "non-profit organization that follows the classic Kodokan teachings of judo," and is staffed by "volunteer instructors."

The petition submitted as a "competition itinerary" a printout from the "Coming Events" website of the U.S. Judo Federation (USJF), which appears to list all 2009 USJF-sanctioned events nationwide as of March 30, 2009. As of the date the petition was filed, there were 10 events scheduled for the remainder of the year.

The director issued a request for additional evidence ("RFE") on August 3, 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 a response dated September 11, 2009, counsel for the petitioner stated:

In order to be competitive, Judo teams must search for International Class athletes to recruit as part of their team as well as instruct lower tier members. [The beneficiary] as an Olympic Class Athlete is required for both a competitor and instructor

The petitioner provided a summary of the terms of its employment agreement with the beneficiary. The petitioner noted that the beneficiary, as a national level competitor in Judo, "is tremendously valuable as a judo coach," and that "his faculty position at our dojo brings much prestige to us." The petitioner stated that

"in exchange for his teaching and coaching of our senior students we pay for his competition expenses (travel, lodging and food stipend)." The petitioner indicated that, in addition to his assignments as a judo instructor at the petitioner's facility three days per week, the beneficiary will participate in over 35 Judo tournaments and championship events between 2009 and 2011. The petitioner indicated that between May and July of 2010 and 2011, the beneficiary would be focusing as a coach on special training of the petitioner's youth members for the [REDACTED] while he would focus in August and September of each year on his own training for the [REDACTED] held annually in September.

The director denied the petition on September 25, 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 asserts:

We understand that AAO has ruled numerous times that an alien cannot perform as an instructor/coach at an athletic competition/event or tour. However we believe that a reading of the statute while maintaining its intent allows for a grant of P-1 status for an alien whose sole purpose with respect to a specific athletic competition is performance as an athlete.

The petitioner is a competitive Judo Institute that competes at National Judo Events and Competitions throughout 2009 and 2011. Among the 42 separately itemized events previously submitted, only two specific events involve [the beneficiary] as something other than an athlete. In the overwhelming majority of these "specific athletic competitions," [the beneficiary] will only be competing solely as an internationally recognized athlete "with respect" to these events.

Finally, counsel argues that the director failed to raise the issue of the beneficiary's eligibility as an athlete "solely performing with respect to a specific athletic competition," in its RFE. In the event that the AAO will not sustain the appeal, counsel requests that this office order the service center to re-open the matter to allow the petitioner an opportunity to present evidence to clarify the issue.

Upon review, the petitioner has not established that the beneficiary is coming to the United States to perform services which require an internationally recognized athlete or that he is coming solely to perform as such an athlete.

As a preliminary matter, the AAO acknowledges counsel's assertion that the director did not provide the petitioner with an opportunity to address all of the director's concerns through the request for evidence. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that a petition may be denied without the issuance of a request for evidence "if all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility." Similarly, USCIS may deny a petition without issuing a request for evidence where all required initial evidence has been submitted but the evidence submitted does not establish eligibility. 8

C.F.R. § 103.2(b)(8)(iii). The regulation at 8 C.F.R. § 103.2(b)(8) states that a petition shall be denied “[i]f there is evidence of ineligibility in the record.” The regulation does not state that the evidence of ineligibility must be irrefutable. The director is not required to issue a request for evidence in every potentially deniable case, nor is she required to address every possible ground for denial in the request for evidence. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence.

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 COMPETE Act opened the P-1 classification to certain coaches, the beneficiary does not meet the criteria set forth at section 214(c)(4)(A)(i)(III) of the Act, which limits P-1 classifications to 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. Regardless, the petitioner clearly seeks to classify the beneficiary as an athlete, who performs at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(I) of the Act.

Although the petitioner indicated that the beneficiary would be competing in regional and national competitions, the petitioner has also unequivocally indicated that the beneficiary will be serving as a coach and instructor for its organization.

With respect to the itineraries, the petitioner has submitted general schedules of events in which its school would participate. The petitioner has referred to the school and its students generally and has provided no evidence of the specific athletic competitions in which the beneficiary would participate.

Therefore, based on the evidence submitted, the director appropriately concluded that the beneficiary would not be coming to the United States to participate in athletic events that require an internationally recognized athlete or *solely* to compete as such an athlete. Rather, the evidence indicates that the beneficiary will be a Judo instructor in addition to any athletic competitions in which he may compete. There is no provision that would allow an alien to come to the United States individually as a P-1 coach other than the above-referenced statutory provision allowing P-1 classification of coaches who participate in certain qualifying amateur sports leagues or associations, or as a P-1 essential support alien accompanying a P-1 athlete or athletes. *See* 8 C.F.R. § 214.2(p)(4)(iv). The statute and regulations do not provide for P-1 classification of an individual who will serve as both a competitive athlete and coach/instructor. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO notes that even if the petitioner had established that the beneficiary is coming to the United States solely to compete in athletic competitions, the petitioner has not demonstrated that the beneficiary would 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. *See* 8 C.F.R. § 214.2(p)(4)(ii).

The itinerary submitted in response to the RFE lists U.S. Open Judo Championships, USA Sr. National Judo Championships and CJI Judo Championships, which appear to be national tournaments that may reasonably require the participation of internationally-recognized athletes. The remainder of the competitions listed, and the vast majority of planned events, are invitational Judo tournaments of unknown significance in the sport. The petitioner has not provided evidence of the entry requirements for such events or comparable evidence that would establish whether the events require the participation of internationally-recognized athletes. 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)). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).”

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.