

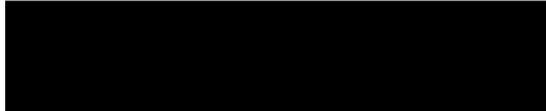
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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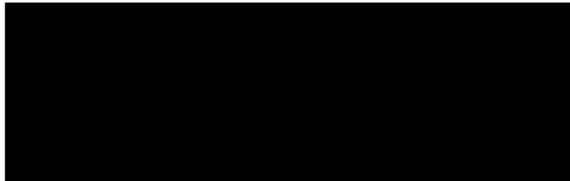
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FILE:  Office: VERMONT SERVICE CENTER Date: **SEP 28 2010**

IN RE: Petitioner: 
Beneficiary: 

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, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of five years. The petitioner, which is self-described as a professional horse show barn, seeks to employ the beneficiary temporarily in the United States as a P-1 athlete to serve as a "Professional Athlete/Rider."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary meets at least two of the seven evidentiary criteria for internationally recognized athletes or athletic teams pursuant to the regulations at 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 asserts that "the 2006 COMPETE Act and all supporting documentation was not properly reviewed and considered in making the decision in this case." Counsel contends that, under the COMPETE Act, there is no requirement that the beneficiary be internationally recognized, provided that the petitioner establish that the beneficiary is a "professional athlete." Counsel submits a brief and additional documentary evidence in support of the appeal.

I. The Law

The instant petition was filed on March 10, 2009, subsequent to the passage of Public Law 109-463, "Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006" (COMPETE Act of 2006), which amended section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. The COMPETE Act, signed into law on December 22, 2006, expanded the P-1 nonimmigrant visa classification to include certain athletes who were formerly admitted to the United States as H-2B nonimmigrants.

Under the current statute, as amended by the COMPETE Act, the P-1 nonimmigrant classification includes: (1) athletes who perform at an internationally recognized level of performance, individually or as part of a team; (2) professional athletes as defined in section 204(i)(2) of the Act; (3) athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and (4) professional and amateur athletes who perform in theatrical ice skating productions.

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 . . .[.]

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."

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.

II. The Issues on Appeal

Here, the petitioner's primary claim on appeal is that the beneficiary qualifies as a "professional athlete" as defined in section 204(i)(2) of the Act, and that the petitioner therefore does not need to establish that the beneficiary is an internationally recognized athlete. Although the director's decision acknowledged that the

petitioner submitted a copy of the COMPETE Act in response to a request for evidence ("RFE"), the director's decision ultimately addressed only whether the beneficiary meets the more stringent requirements pertaining to athletes who perform at an internationally recognized level of performance.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility as a professional athlete. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

A. "Professional Athlete"

The first issue to be addressed is whether the petitioner has established that the beneficiary is a "professional athlete" pursuant to section 214(c)(4)(A)(i)(II) of the Act. As noted above, a professional athlete for purposes of this classification is an individual who is employed by 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. *See* section 204(i)(2)(A) of the Act.

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that it is doing business as a "professional horse show barn," rather than as a professional athletic team. In a letter dated February 2, 2009, counsel for the petitioner stated that the petitioner is a "team" that is "internationally recognized as a leading competitor on the [redacted]"

The director issued a request for additional evidence ("RFE") on March 18, 2009, in which he instructed the petitioner to submit documentary evidence of the beneficiary's achievements as an equestrian rider/athlete, such as newspaper or internet articles demonstrating the beneficiary's placement in competitions. The director noted that the initial evidence, which consisted of several testimonial letters, did not establish that the beneficiary is a rider/athlete.

In a letter dated April 13, 2009, submitted in response to the director's request for additional evidence, counsel stated:

The "2006 Compete Act" states that The Compete Act of 2006 expands the P-1 nonimmigrant visa category currently limited to the Athletes performing at an "internationally recognized level of performance. . . .

* * *

[The petitioner's] Team performs at an internationally recognized level of performance. Attached please find supporting documents that shows the Team of [the petitioner] performs at an internationally recognized level of performance, including, but not limited to, multiple international performances, world cup qualifies [sic] and the Iranian Olympic Team.

The petitioner submitted a copy of the Compete Act and extensive evidence of the competition results achieved by the petitioner's owner, [redacted] as an equestrian rider. In response to the director's request for evidence that the beneficiary is an equestrian rider/athlete, the petitioner submitted several photographs which counsel states depict the beneficiary "in the riding area at [redacted] in Del Mar,

California."

The director noted the petitioner's submission of the Compete Act, but emphasized that qualification for P-1 status as an athlete on an internationally recognized team is intended for foreign athletic teams and thus not applicable to the petitioner. The director further noted that pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B), an alien who will compete individually or as a member of a United States team must still be accompanied by evidence that the athlete has achieved international recognition in the sport based on his reputation.

On appeal, counsel asserts that the beneficiary qualifies under the COMPETE Act as a "professional athlete," explaining as follows:

[The petitioner's] Team and the beneficiary are members of the [REDACTED] who governs and regulates the Sport and its Competitions. . . .

The [REDACTED] currently has 71,061 members that have millions of dollars in annual revenues, well in excess of \$10,000,000.00. In addition, annual revenue for prizes and award for competition is well in excess of \$10,000,000.00 The [REDACTED] is made up of hundreds of teams in the United States. The [REDACTED]s are in the following 8, of sport teams, all that is required under the 2006 Compete Act is 6. The teams are as follows: Dressage, Driving, Endurance, Eventing, Para-Equestrian, Reining, Show Jumping and Vaulting.

In support of the petition, the petitioner has submitted copies of [REDACTED] membership cards for the petitioner's owner and for the beneficiary, as well as the petitioner's owner's individual competition results. The name of the petitioning company or "team" does not appear on any of these documents.

The petitioner has also submitted extensive information regarding [REDACTED], including its mission statement and 2009 Rule Book. The evidence submitted demonstrates that [REDACTED] is the national governing body for equestrian sport in the United States, and that [REDACTED] does govern the conduct of its members and regulates contests and exhibitions in the sport. However, the petitioner did not submit evidence that the equestrian sport is comprised of "6 or more professional sports teams" or that the petitioning organization is a professional sports team. Based on the evidence submitted, it is evident that [REDACTED] issues memberships to individuals, not to teams, and that competition occurs on an individual level.

The AAO acknowledges the petitioner's claim that its "team" "has been internationally recognized in equine sports in the United States and abroad for many years," but notes there is no corroborating evidence in the record to support the claim that the petitioner has been recognized in any capacity as a "team" competing in the equestrian sport. Again, 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." The AAO anticipates that evidence of a "sports team" would include documentation of the team's organization, performance, and results as a competitive unit in actual team events. The petitioner's owner's individual results in equestrian events are noted, but such results are not evidence that the petitioner is competing as a professional sports team in a league or association comprised of professional sports teams.

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)). 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 Obaighena*, 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 can find no basis for considering the petitioner a "team" when there is no evidence that it participates in a team sport or that it is recognized in the industry as a professional sports team. Accordingly, the petitioner has not established that the beneficiary will be employed by the petitioner as a "professional athlete" as defined in section 204(i)(2) of the Act.

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. As noted by the director, in order for the beneficiary to qualify as a member of an internationally recognized team based on the team's reputation, the team must be foreign. Therefore, even assuming, *arguendo*, that the petitioner had established that it is a "team," the beneficiary would still be required to establish that he has achieved international recognition in his sport based on his own reputation. *See generally*, 8 C.F.R. §§ 214.2(p)(4)(ii)(A) and (B).

At the time of filing, the petitioner described the beneficiary as "a professional equestrian rider with years of experience within this specialized industry," and as "an asset to the equestrian industry." The petitioner provided a copy of the beneficiary's membership card identifying him as a "Senior Pro" member, and counsel indicated that the beneficiary "has successfully performed and competed in numerous events." The petitioner submitted several letters from professional riders and a letter from the as references for the beneficiary, but did not provide any evidence of the beneficiary's competition or event results documenting his career as an equestrian athlete.

In the request for evidence issued on March 18, 2009, the director instructed the petitioner as follows:

Please submit evidence that the beneficiary has participated in equestrian events as a rider. Evidence may include newspaper or internet articles showing the beneficiary's placement in competitions.

Letters of support submitted with the petition do not establish that the beneficiary is an athlete rider.

As noted above, the petitioner's response to the RFE included several photographs which counsel indicates depict the beneficiary "in the riding arena at in Del Mar, California." Counsel further emphasized that the peer letters submitted at the time of filing were "submitted by individuals at the highest level of the sport," and also "support that the beneficiary is an Athlete Rider." The petitioner did not submit the requested competition results, newspaper or other articles about the beneficiary as requested by the director.

The director concluded that the petitioner failed to submit evidence to satisfy any of the seven evidentiary criteria at 8 C.F.R. 214.2(p)(ii)(B)(2), of which at least two are required. Therefore, the director concluded that the

beneficiary is not an internationally recognized athlete. The AAO concurs with the director's determination.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i), the petitioner must submit evidence that the beneficiary has participated to a significant extent in a prior season with a major United States sports league. Counsel asserts that "the beneficiary has been employed by [the petitioner's] Team for approximately five years," and that he "has participated in all of the events with the team that season." The record is devoid of any competition or event results the beneficiary has achieved in the United States or elsewhere as an individual athlete and does not indicate that he has ever competed as part of a major United States sports league. 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 Obaighena*, 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).

Even if the petitioner had established that [REDACTED] should be considered a "sports league," and the petitioning entity is a "team," the petitioner could not meet this criterion without submitting evidence of the beneficiary's career as a competitive athlete in the United States. His [REDACTED] membership card is insufficient. Again, 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. at 165. The fact that the beneficiary is currently a USEF member is insufficient to establish that he meets this criterion.

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. Again, the record contains no documentary evidence of the beneficiary's participation in any specific equestrian events or competitions, much less his participation in international competition with a national team.

The criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iii) requires the petitioner to submit evidence that the beneficiary has participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition. The petitioner does not claim that the beneficiary can meet 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 dated November 12, 2008 from [REDACTED] [REDACTED] states that she has been provided with a copy of the beneficiary's resume and that she "has no objection to the granting of the petition."

Upon review, the AAO notes that a statement that no objection is raised is not equivalent to a statement detailing how the beneficiary is internationally recognized. [REDACTED] letter stating that she has no objection is sufficient to meet the consultation requirement pursuant to 8 C.F.R. § 214.2(p)(2)(ii)(D), but it does not satisfy the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

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 has submitted peer letters from five individuals. [REDACTED] an international show jumper, states that she has become acquainted with the beneficiary through her

competitions on the horse show circuit and that the beneficiary's "abilities as an Athlete/Rider would be an asset to any Horse Show Barn."

a professional horse show rider, states that he is acquainted with the beneficiary through his involvement in the equestrian industry, and that the beneficiary "has exemplified that he is a rider of consummate skill."

The petitioner also provided a letter from an international show jumper, who states that he has become acquainted with the beneficiary during his experience in the international circuit." He states that the beneficiary "has spent many years working on his skills" and that the "[h]orses he has worked with, prepared and maintained have won international accolades."

states that he knows the beneficiary and has "found him to be one of the most hardworking and knowledgeable professional horsemen available," and "is very well educated in every aspect of the horse industry."

Finally, professional show jumper with states that he has become acquainted with the beneficiary through his involvement in the show circuit and that the beneficiary "is well appreciated for his skills as an equine athlete."

The petitioner also submitted extensive material regarding the individuals who provided letters, including their rankings, competition results, information regarding their farms, and articles about these individuals.

Upon review, none of the persons providing testimonials have detailed the beneficiary's accomplishments in the sport or how he is internationally recognized. The letters are written in vague language and do not establish how the beneficiary's achievements are renowned, leading, or well-known in more than one country. Furthermore, apart from the letters identifying the beneficiary as a professional athlete/rider, there is no evidence of his accomplishments in the sport, such as competition results or letters from prior employers. As noted above, the director specifically advised the petitioner that the peer letters alone were insufficient to establish the beneficiary's eligibility and specifically requested evidence of the beneficiary's individual achievements and competition results. 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Based on the foregoing discussion, the petitioner has not established that the beneficiary meets this criterion.

To meet the sixth criterion, the petitioner must submit evidence that the individual or team is ranked, if the sport has an international ranking. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi). The petitioner has submitted the Showjumping Computer Ranking List showing the rankings of 467 individual riders in the sport, but the beneficiary's name does not appear on the list, and no other evidence has been submitted to establish that the beneficiary is ranked among competitors in the sport. As discussed, the record does not contain any independent evidence that the beneficiary has ever ridden competitively in any equestrian competition. The petitioner has not established that the beneficiary meets this criterion.

The seventh and final criterion requires the petitioner to submit evidence that the alien or team has received a significant honor or award in the sport. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii). Counsel for the petitioner stated

at the time of filing that "[the beneficiary] and [the petitioner] have received numerous and internationally recognized prizes and awards." However, when asked to provide evidence of the beneficiary's achievements in the form of competition results and newspaper or internet articles, the petitioner submitted a few photographs of the beneficiary on horseback. Such photographs do not provide evidence that the beneficiary has received a significant honor or award. As such, the record contains no documentary evidence of the purported awards received by the beneficiary in his sport. 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).

III. Conclusion

In summary, as discussed above, the petitioner has also failed to establish that the beneficiary is a professional athlete as described at section 214.2(c)(4)A)(i)(II) of the Act. Furthermore, 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 in the equestrian sport. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, it is noted that the petitioner indicated under penalty of perjury in Part 4 of the Form I-129 petition that the beneficiary had never been denied the requested classification. This petition was filed on March 10, 2009. USCIS records reflect that the petitioner filed an Form I-129 petition requesting that the beneficiary be granted P-1 classification on or about November 13, 2008. The petition was denied by the Director, California Service Center on January 12, 2009. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." As the petitioner indicated on the form that the beneficiary had never been denied the requested classification, and the petitioner failed to fully disclose the previously filed petition, this petition will be denied for this additional reason as a matter of discretion. Finally, the AAO notes that the petitioner has not submitted copies of any written contracts between the petitioner and beneficiary or, in the alternative, a summary of the terms of the oral agreement under which the beneficiary will be employed, as required by 8 C.F.R. § 214.2(p)(2)(ii)(B). For this additional reason, the petition cannot 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 proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.