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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



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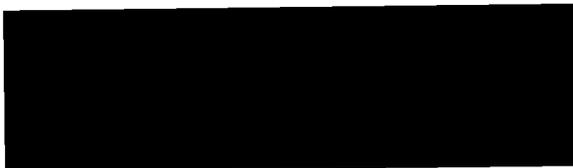


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 28 2010**

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, 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 approximately five years. The petitioner, which is self-described as an equestrian center, 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 six 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 were 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 February 5, 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 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 issued a request for evidence ("RFE") on April 28, 2009 specifically requesting that the petitioner submit documentation to establish that the beneficiary qualifies as a "professional athlete," as contemplated under the COMPETE Act, 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 an "equestrian center," rather than as a professional athletic team. In a letter dated December 8, 2008, counsel for the petitioner stated that the petitioner is a "team" that "will participate in International Competitions at an internationally recognized level of performance."

The director issued a request for additional evidence ("RFE") on February 19, 2009, in which she instructed the petitioner to establish that the beneficiary as an individual athlete has achieved international recognition in his sport based on his own reputation.

In a letter dated April 16, 2009, submitted in response to the director's request for additional evidence, counsel stated:

[The beneficiary] seeks to come to the United States temporarily for the purpose of performing as a [redacted] for [the petitioner's] Team. The 2006 Compete Act . . . does not require a showing that the alien for whom a visa is sought is performing at an internationally recognized level as an individual, just as a team.

The director issued a second RFE on April 28, 2009 in order to address the petitioner's claim that the beneficiary qualifies as a professional athlete under the COMPETE Act, including: (1) evidence that the petitioner is a member of an association of 6 or more professional sports teams whose combined revenues exceed \$10,000,000 per year; and (2) evidence that the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage, or any minor league team

that is affiliated with such an association.

In a response dated May 11, 2009, counsel stated:

The beneficiary is . . . a [REDACTED] who currently has 71,061 members. . . . Also has more than [REDACTED] in [REDACTED] that does not include the revenue for all of the other disciplines . . .

On appeal, counsel further addresses the beneficiary's eligibility under the COMPETE Act, stating:

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

The [REDACTED] currently has [REDACTED] 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] Teams are in the following 8, of sport teams, all that is required under the 2006 Compete Act is 6. The teams are as follows: [REDACTED]

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 Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO can find no basis for considering the petitioning equestrian center 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. To demonstrate that the beneficiary is an internationally recognized athlete, the petitioner must satisfy at least two of the evidentiary criteria provided at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

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 [REDACTED] membership card identifying him as a "[REDACTED] member, and counsel indicated that the beneficiary "has successfully performed and competed in numerous events." The petitioner did not, however, 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 February 19, 2009, the director specifically requested documentary evidence to satisfy at least two of the seven evidentiary criteria set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). In response to the RFE, counsel stated that the requested evidence was either not required or not applicable because the petitioner is "a [REDACTED], which performs at an internationally recognized level of performance." Counsel emphasized that the Compete Act "does not require the athlete to compete as an individual of international recognition."

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. 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. Even if the petitioner had established that [REDACTED] should be considered a "sports league," 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 [REDACTED] 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 has not submitted evidence to 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 6, 2008 from [REDACTED] Managing Director, [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 letters from several 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 [REDACTED]"

[REDACTED], 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 [REDACTED] 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."

[REDACTED] 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, [REDACTED] Inc. states that the beneficiary "is excellent with top show horses and has experience training prime horses for competitions" and "developed professional skills which are of

great aid to the horses in the show ring."

On appeal, counsel indicates that the petitioner is submitting as "Exhibit M" a statement from [REDACTED], a prior [REDACTED], attesting to the beneficiary's recognition. The AAO notes that Exhibit M includes [REDACTED]'s professional resume and evidence of his achievements in the sport, but not the referenced letter. Upon careful review of the complete appeal submission, the AAO did not locate a letter from [REDACTED].

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. 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 [REDACTED] 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. In fact, 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 submit evidence of any significant honors or awards the beneficiary has received, counsel simply replied that this evidence is not required. 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.


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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.