

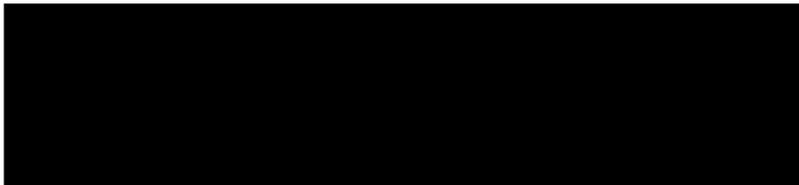
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D9

DATE: **APR 05 2011** Office: VERMONT SERVICE CENTER FILE: EAC 10 099 51087

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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: SELF-REPRESENTED

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 \$630. 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 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). The petitioner states that it is a professional baseball team. It seeks to employ the beneficiary as a professional athlete for a period of five months.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary qualifies for P-1A classification as a professional athlete, or under any other class of athlete described under section 214(c)(4)(A)(i) of 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, the petitioner submits: a letter describing the composition of the Canadian-American Professional Baseball League in which its team competes; an unsigned letter describing the beneficiary's professional baseball experience, which is attributed to the Dominican Republic Scouting Supervisor of the Philadelphia Phillies; and copies of the beneficiary's prior U.S. visas issued in the H-2B and P-1 nonimmigrant categories.

Upon review, and for the reasons discussed below, the AAO concurs with the director's determination that the evidence of record fails to establish that the beneficiary is qualified for P-1 classification as a professional athlete or internationally-recognized athlete.

I. The Law

On December 22, 2006, Public Law 109-463, "Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006" (COMPETE Act of 2006), amended Section 214(c)(4)(A) of the Act, authorizing certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. The COMPETE Act 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.
- (B) Any minor league team that is affiliated with such an association.

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 internationally-recognized P-1 athletes as follows:

- (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. Beneficiary's Eligibility as a P-1 Athlete

The director determined that the evidence submitted failed to establish that the beneficiary qualifies under any of the categories of qualifying athletes and coaches set forth at sections 214(c)(4)(A)(i)(I) through (IV) of the Act.

The beneficiary has a contract with the petitioning baseball team in the Canadian-American league, which is described as an independent professional baseball league consisting of six clubs. The beneficiary is clearly not coming to the United States to perform 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, pursuant to section 214(c)(4)(A)(i)(III) of the Act. Nor is the beneficiary coming to the United States as a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production, pursuant to section 214(c)(4)(A)(i)(III). Therefore, the AAO will limit its discussion to whether the beneficiary qualifies as an internationally-recognized athlete under 214(c)(4)(A)(i)(I) of the Act or as a professional athlete under section 214(c)(4)(A)(i)(II) of the Act.

A. Beneficiary's eligibility as a Professional Athlete

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.

At the time of filing the Form I-129, Petition for a Nonimmigrant Worker, the petitioner described itself as a

professional baseball team established in 1998, with 100 employees and gross annual income of \$1.8 million. The petitioner's supporting evidence consisted of a partially-illegible copy of its "Canadian-American League Uniform Player Contract" with the beneficiary, and partially-illegible copies of the beneficiary's prior U.S. visas.

On March 17, 2010, the director issued a request for additional evidence ("RFE"). The director advised the petitioner that if it claims that the beneficiary qualifies as a professional athlete as defined in section 204(i)(2) of the Act, it must submit evidence that the beneficiary will be 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; or, any minor league team that is affiliated with such an association.

The petitioner's response to the RFE consisted of two similar letters, both dated February 28, 2008, from Dan Moushon, president of the "Can-Am" league. Mr. Moushon stated:

Please be advised that the Can-Am League is an independent professional baseball league that has an active player roster consisting of twenty-two players. While most of these players are United States citizens, it is common for teams to also sign aliens to complete their active roster. The signing of foreign players has been a policy adhered to by both the Can-Am League and independent baseball in general for several years.

Per League rules and regulations, five of these twenty-two players must be rookies. By definition, a rookie is a player with less than one year of service. It is quite common for rookies to have no prior professional experience. In some cases, alien rookies may lack intercollegiate athletic experience. Therefore, it is possible that an alien player may be signed as a rookie player in order to fulfill the league requirements of five rookies and has no prior intercollegiate or professional experience.

In the second letter, Mr. Moushon stated:

Players participate in spring training prior to the season. The regular season begins in mid-May and concludes in early September, followed by league playoffs. Qualifications for play in the league include prior experience in intercollegiate athletics or participation in an international competition with a national team or winter league.

The director denied the petition on April 9, 2010, concluding that the petitioner failed to establish that the beneficiary qualifies as a professional athlete as defined at section 204(i)(2)(A) of the Act. The director emphasized that the petitioner failed to submit documentation regarding the "Can-Am" league and thus failed to establish that the petitioner's team is a member of an association of six or more professional teams whose combined revenues exceed \$10 million.

On appeal, the petitioner submits a letter from the Can-Am organization dated April 13, 2010. The letter is nearly identical in content to the above-referenced letters, but includes the following additional information: "For the 2010 season, the league will consist of the following six clubs: Brockton Rox, New Jersey Jackals, Pittsfield Colonials, Quebec Capitals, Sussex Skyhawks and Worcester Tornadoes."

While it appears that the petitioner is a member of an association of 6 or more professional sports teams, the record contains no information regarding the Canadian-American league's annual revenues. Absent evidence that the teams of the Canadian-American league generate total combined revenues in excess of \$10,000,000 per year, the petitioner has not established that the beneficiary qualifies as a professional athlete as defined at section 204(i)(2) of the Act.

B. Beneficiary's Eligibility as an Internationally-Recognized Athlete

The remaining issue is whether the petitioner 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)(1) of the Act. A petition for an internationally-recognized athlete must include: (1) a tendered contract with a major United States sports league or team or a tendered contract in an individual sport, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(1); and (2) documentation that satisfies at least two of the seven evidentiary criteria provided at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

As noted above, the petitioner's initial supporting evidence included a copy of the beneficiary's Canadian-American League Uniform Player Contract and a copy of the beneficiary's expired P-1 visa sponsored by a different employer.

In the RFE issued on March 17, 2010, the director asked the petitioner to clarify whether its team falls within the Major League Baseball organization. The director advised the petitioner that if its claim is that the beneficiary qualifies as an individual who performs as an athlete at an internationally-recognized level of performance, it must demonstrate that the beneficiary has achieved international recognition based on his own reputation by submitting evidence to satisfy at least two of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

As noted above, the petitioner's response to the RFE included the above-referenced letters dated February 28, 2008 from Mr. Moushon of the Canadian-American baseball organization. The petitioner did not submit evidence of the beneficiary's individual qualifications as an internationally-recognized athlete, or evidence that the beneficiary's contract with the Canadian-American league constitutes a tendered contract with a major United States sports league or team. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). Accordingly, the director appropriately determined that the beneficiary does not qualify for the classification sought as an internationally-recognized athlete.

The evidence submitted on appeal includes a letter dated April 14, 2010 and attributed to Koby Perez, Dominican Republic Scouting Supervisor for the Philadelphia Phillies. The letter has not been signed by Mr.

Perez and is therefore lacking in probative value. The letter indicates that the beneficiary played the entire 2003 season with the Milwaukee Brewers major league baseball team, and part of the 2007 season with the Cincinnati Reds major league team. The letter further states that the beneficiary has played with the New York Mets minor league affiliates, the Milwaukee Brewers and Texas Rangers farm systems and the Atlanta Braves AAA affiliate. Finally, the letter includes a link to the beneficiary's baseball statistics at the website "The Baseball Cube." The petitioner submits copies of the beneficiary's prior visas which indicate that the beneficiary has held: (1) a P-1 visa petitioned by the "Atlanta Natl League Baseball Club" for the 2008 season; (2) an H-2 visa petitioned for by the Cincinnati Reds for the 2007 season; and (3) two H-2B visas petitioned for by the New York Mets for the 1999 and 2000 seasons.

The AAO notes that where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Nevertheless, we note that the evidence submitted relates to only one of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2), of which two must be satisfied to establish eligibility. While it appears that the beneficiary has participated in a prior season with a major United States sports league, the evidence submitted is insufficient to establish that the beneficiary participated "to a significant extent" in such league. *See* 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i). Further, the record remains devoid of any evidence that the beneficiary's Canadian-American League Uniform Player Contract constitutes "a tendered contract with a major United States sports league or team." 8 C.F.R. § 214.2(p)(4)(ii)(B)(1).

Based on the foregoing discussion, the AAO upholds the director's determination that the petitioner failed to establish that the beneficiary qualifies for the classification sought, either as an internationally-recognized athlete or as a professional athlete, pursuant to section 214(c)(4)(A)(i)(I) or (II) of the Act. Accordingly, the appeal will be dismissed.

C. Written Consultation from a Labor Organization

The regulation at 8 C.F.R. § 214.2(p)(7)(i)(A) states that consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P classification can be approved. USCIS will render a decision on the evidence of record in those cases where it is established by the petitioner that an appropriate labor organization does not exist. *See* 8 C.F.R. § 214.2(p)(7)(i)(F).

The regulation at 8 C.F.R. § 214.2(p)(7)(ii) states that, for P-1 athletes, consultation must be made "with a labor organization that has expertise in the area of the alien's sport." *See also* section 214(c)(6)(A)(iii). In the decision dated April 9, 2010, the director noted that the petitioner failed to submit a consultation in support of the petition or in response to the director's specific request for the required consultation in the RFE. Upon

review, we confirm that the record of proceeding does not contain the required consultation. The petitioner has not, in the alternative, established that there is no appropriate labor organization. Accordingly, the petition will be denied for this additional reason.

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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

The AAO acknowledges that USCIS has previously approved a P-1 nonimmigrant petition filed on behalf of the beneficiary. As noted above, the prior petition was filed by the Atlanta National League Baseball team, and not by the petitioner. Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The petitioner in this matter is not a Major League Baseball team, and did not submit evidence to establish that it is part of a qualifying association of professional sports teams pursuant to section 204(i)(2) of the Act, 8 U.S.C. § 1154(i)(2), such that the beneficiary would be eligible for the requested classification as a professional athlete. As discussed above, the petitioner submitted minimal supporting evidence in support of its claims and therefore did not meet its burden to establish that the beneficiary is either a professional athlete or an internationally-recognized athlete. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)).

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 at 1043.

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.