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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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Services

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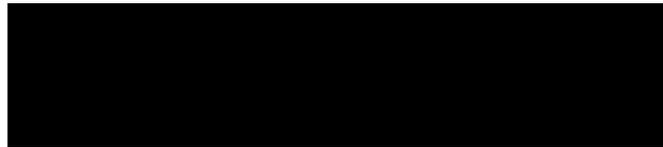


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

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 \$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 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), as an internationally recognized athlete. The petitioner states that he is a jockey agent and the beneficiary is a jockey. The beneficiary was previously granted P-1 status pursuant to an approved petition filed by a different petitioner. The petitioner seeks to extend the beneficiary's status for a period of two years.

The director denied the petition, concluding that the petitioner failed to submit a contract between the petitioner and the beneficiary which specifies the terms and conditions of employment, a contract between the beneficiary and his actual employers, or a complete itinerary for the requested period of employment.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner submitted evidence to establish that "there are not any contracts between jockeys and their agents nor between jockeys and the trainers/owners," and contends that such evidence was ignored. Counsel further explains why a complete itinerary could not be submitted. Counsel relies on an unpublished AAO decision in support of her assertions that the evidence submitted has previously been deemed sufficient to meet the contract and itinerary evidentiary requirements set forth in the P-1 regulations. Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that she would submit a brief and/or additional evidence to the AAO within 30 days. Counsel filed the appeal on July 9, 2010 and, as of this date, has not submitted the brief or evidence. Accordingly, the appeal will be dismissed.

Upon review, and for the reasons discussed herein, the AAO will uphold the director's decision and dismiss the appeal.

I. The Law

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
 - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
 - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in,

that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and

- (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . .[.]

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien must seek to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) states:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

The regulation at 8 C.F.R. § 214.2(p)(3) further states, in pertinent part:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The evidentiary criteria for internationally recognized athletes are set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B).

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.

Finally, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf

with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services of engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

II. Discussion

The director denied the petition concluding that the petitioner failed to submit: (1) its contract with the beneficiary; (2) contracts between the beneficiary and the actual employers, and (3) a complete itinerary for the requested two-year period of employment.

Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on March 22, 2010. The petitioner indicated that it is a jockey agent and the beneficiary is a jockey who will ride thoroughbred horses in races at [REDACTED] and other tracks. The petitioner stated that the beneficiary will earn wages of \$1,000 per week, plus other compensation in the form of a percentage of purse monies for first-place finishes and 5% for second, third and fourth place race finishes.

The petition was accompanied by a letter from counsel dated February 3, 2010. With respect to the terms of employment, counsel stated:

As stated in the original petition no written contract has been entered into with [the beneficiary]. It is not the custom and practice in the industry for there to be a legally binding contract between a jockey and his or her agent or between jockey and a trainer. It is impossible to name what mounts a jockey will receive since it is done only one or two days before a race. [The beneficiary] will be compensated at the rate of \$45.00 to \$65.00 per

mount (approximately \$1,000.00 per week) plus the percentage of the purse money. [The beneficiary] will receive 10% of the purse money for a win and 5% for a second, third and fourth. Please see the letter from a [sic] expert in this industry.

The petitioner submitted a letter dated September 9, 1992 from [REDACTED] which is described as an association of horse trainers and owners with 14,000 members. [REDACTED] states, in pertinent part, the following with respect to jockey agents and the working conditions of jockeys:

The jockey agent secures mounts for his/her particular jockey. Most jockey agents will only have one apprentice jockey and one journeyman jockey. A jockey agent also has to have a license and is considered an expert since they have to know the owners, trainers, tracks and the particular horses. A jockey is named on a horse only a few days before the race or even on the day of the race. An itinerary of race meets is available but it would be impossible to name what mounts a jockey will receive.

There is not a labor organization/union in the Thoroughbred horse racing industry for jockeys or anyone else. Also it is not the custom or practice in the industry for there to be a legal tendered contract between a jockey and his agent or between a jockey and a trainer. If a jockey gets a mount in California, especially in southern California, he/she have [sic] a national or international reputation or they would never get mounts in this fiercely competitive field.

The petitioner also submitted a partial copy of an unidentified unpublished AAO decision from 1993, in which it appears that the AAO accepted the above-referenced letter in lieu of evidence to satisfy the evidentiary requirements at 8 C.F.R. § 214.2(p)(2)(ii)(B), (C) and (D).

In lieu of an itinerary, the petitioner submitted racing calendars for several California race tracks, including [REDACTED]

The director issued a request for additional evidence ("RFE") on April 21, 2010, in which she requested that the petitioner submit, *inter alia*, the following: (1) a copy of the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of the beneficiary's employment; (2) a contractual agreement between each of the employers and the beneficiary for each event; (3) a complete itinerary of the proposed events, including the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed; and (4) a detailed explanation of the nature of all events or activities.

In response, counsel for the petitioner, in a letter dated June 1, 2010, reiterated that "in the horse racing industry in California, it is not custom and practice for there to be a contact [sic] between the agent or trainer and the jockey." Counsel stated that jockeys receive a mount fee for each horse they ride in a race and receive a percentage of the purse monies when they finish in the top four positions in a race.

Counsel further stated that there are no contractual agreements between the trainer/owner and the jockeys, given that "the event is a horse race, which lasts approximately two minutes." Counsel indicated that a jockey "is eligible to ride for anyone who gives him a mount."

In response to the director's request for a complete itinerary, counsel provided the addresses and more exact dates for eight California racetracks, as well as the horseracing schedule for 2010 published by the California Horse Racing Board. Counsel noted that the schedules are published one year at a time, and indicated that the meets are held annually on approximately the same schedule. Finally, counsel noted that "there is not any way to state the trainer/owner that the jockey will be riding for since most jockeys are named only a couple days before each race."

In support of these assertions, the petitioner submitted a letter dated March 30, 2010 from [REDACTED]. The letter is identical in content to the 1992 letter from the [REDACTED].

The director denied the petition on June 8, 2010, concluding that the petitioner failed to submit an itinerary for the requested two-year validity period. Therefore, the director found the proposed itinerary "insufficient to show a continuous series of events," and also found counsel's statement that the meets would be held the following year to be insufficient. The director acknowledged that the petitioner provided the addresses for the racetracks at which the beneficiary would compete, but found that the itinerary was incomplete as it "does not specify the exact dates of each and every service or engagement or the names and address of the actual employers." The director acknowledged that the names of the actual horses a jockey will ride are not known in advance, but found that the petitioner did not identify for which stables, trainers or owners the beneficiary would ride.

The director further found that "in order for the petitioner to act as the beneficiary's agent, it must submit a contract between itself and the beneficiary which specifies the terms and conditions of employment," as well as "a contract between the actual employers and the beneficiary." The director concluded that no such contracts have been submitted and that the petitioner "has not even attempted to name the employers let alone submit the required contracts."

On appeal, counsel suggests that the director failed to understand the petitioner and beneficiary's industry, and ignored evidence, namely the letter from the CTT, explaining why such evidence is not available. With respect to the director's specific concerns, counsel states:

When you cannot name the mount, you cannot name the trainer, owner or stable, or what exact days the jockey will ride. The California Horse Racing Board does not publish the racing schedule more than one year at a time, even though the dates are very similar each year. Since the exact race dates cannot be given to [USCIS] except for the one year then the ending date of the P-1 petition could be the last race day of the year, if necessary. A jockey with a California agent can ride any trainer that races horses at the California racetracks. All of the trainers names could be listed with their addresses but the addresses are their home address because almost all trainers have a small office at the racetrack where they are stabled. We could list all the trainers currently stabled at each track, but the racing does not stay in the same place so this would change as the racing changes. Jockeys are self-employed, their jockey agents secure

mounts for them in the races. There is not any way to state that on such and such a day this beneficiary will be riding [REDACTED] horse in the fifth race, only three to four days ahead of the race. The jockey agent (a US citizen or LPR) makes his/her money by the mounts he/she secures for their jockey. A jockey makes money by riding as many races as possible that is what they live for. It does not make any sense to say that unless you have a contract, no more jockeys.

Counsel refers once again to an unpublished AAO decision dated June 18, 1993 in support of her claims.

Upon review, and for the reasons discussed below, the AAO will uphold the denial of the petition. As a preliminary matter, we note that counsel's reliance on an unpublished AAO decision is misplaced. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, counsel has provided only a partial copy of the unpublished decision, and thus has failed to establish that the facts of the instant petition are analogous to those in the cited matter.

The first issue to be addressed is whether the petitioner has provided 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 and activities, as required by 8 C.F.R. § 214.2(p)(2)(ii)(C). The regulations at 8 C.F.R. § 214.2(p)(2)(iv)(E)(2) indicate that a person in business as an agent may file the P petition as the representative of both the beneficiary and multiple employers if the supporting documentation includes a complete itinerary of services or engagements.

Here, the petitioner has provided the complete schedule for the 2010 horse racing season as established by the California Horse Racing Board, and counsel indicates that the schedule for the following year would be substantially the same. Counsel has also provided the addresses for all participating tracks in the 2010 season, and has explained why it would not be feasible to provide the details of specific employers, in this case trainers/owners, in advance.

A review of the evidence of record supports counsel's contention that the dates and locations of events during the California horse racing season are substantially similar from year to year. The petitioner provided evidence of 19 races won by the beneficiary during 2009 [REDACTED]. The dates and locations of those races are similar to those of the proposed events in 2010. Therefore, we conclude that, based on the totality of the evidence submitted, the petitioner has met its evidentiary burden with respect to the beneficiary's itinerary for the requested period of employment. The director's finding with respect to this issue will be withdrawn.

The second issue addressed by the director is whether the petitioner is required to submit copies of contracts between the beneficiary and the actual employers. Pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E)(2), a petition filed by a person in business as an agent should identify the names and addresses of the employers, and, "in questionable cases, a contract between the employer(s) and the beneficiary . . . may be required."¹ As stated in the regulation, the burden is on the agent to explain the terms and conditions of the employment.

¹ In the decision dated June 8, 2010, the director misquoted the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E)(2) by omitting the words "In questionable cases."

Counsel has explained that the beneficiary is eligible to ride for any trainer or owner licensed in California and does not secure his mounts until days or even hours before his races. Counsel has further explained that jockeys and owners do not enter into written contracts for individual race events, and even if they did, it would not be feasible to provide them ahead of time. The letters from the [REDACTED] support counsel's assertions. A review of the evidence submitted of the beneficiary's results confirms that the beneficiary has ridden in races for dozens of owners in California.

Upon review, the AAO concludes that the submission of contracts between the beneficiary and his actual employers (trainers/owners) is not required. The evidence of record shows that the beneficiary was [REDACTED] during the most recent season. The beneficiary has maintained a high level of starts, has substantial earnings, and there is clearly a demand for his services among California's horse owners. Under the circumstances, the AAO does not consider this to be a "questionable case" in which there is some basis to doubt whether there will be work for the beneficiary during the requested validity of the petition. See 8 C.F.R. § 214.2(2)(iv)(E)(2). If the beneficiary were a jockey who was new to the sport of thoroughbred racing in the United States, it may be reasonable to require some additional documentation, in lieu of the unavailable contracts, as assurance that the beneficiary is likely to acquire mounts on a regular basis. However, that is not the case in this matter, and the AAO will withdraw this ground for denial.

The third and final issue to be addressed is whether the petitioner has satisfied its burden to provide "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 will be employed." 8 C.F.R. § 214.2(p)(2)(ii)(B).

Counsel repeatedly states that the petitioner has "no written contract" with the beneficiary and that "it is not the custom and practice in the industry for there to be a legally binding contract between a jockey and his or her agent." Counsel indicates that the beneficiary will receive a fee per mount and a percentage of prize winnings, and is expected to earn approximately \$1,000 per week. USCIS cannot accept counsel's unsupported assertions as "a summary of the terms of the oral agreement" under which the beneficiary will be employed or as evidence that an oral agreement was reached. 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).

Absent evidence of some form of agreement between the petitioner and the jockey agent, the petitioner has not even established that the jockey agent-jockey relationship exists. The petitioning individual signed the Form I-129 and identified himself as a jockey agent. The record contains no letter or statement from the petitioner confirming his role as agent and the lack of a written contract, no evidence of his agent's license with the California Horse Racing Board, and no evidence that he has registered with the board as the beneficiary's agent. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

Even if there is no formal written contract between the petitioner and the beneficiary, it is reasonable to believe that the parties must have, at a minimum, agreed that the petitioner will act as the beneficiary's jockey agent for the purposes of securing mounts during the requested period of employment and for the purpose of filing the P-1 petition on his behalf. When there is no written contract, the petitioner must nevertheless submit a summary of any oral agreement that exists between it and the beneficiary. If there is no oral or written agreement, then it is impossible to find that the petitioner is a qualifying employer or agent. The fact that written contracts are not customarily executed in the beneficiary's sport does not prohibit the petitioner from otherwise complying with the regulatory requirement at 8 C.F.R. § 214.2(p)(2)(ii)(B). The AAO will take into account what is customary in the field, but not to the point of completely exempting the petitioner from this regulatory requirement. The evidence of record is insufficient to establish the agent-athlete relationship between the petitioner and the beneficiary.

Based on the foregoing, the AAO concludes that the director properly denied the petition based on the petitioner's failure to submit evidence to satisfy the regulatory requirement at 8 C.F.R. § 214.2(p)(2)(ii)(B). Accordingly, the appeal will be dismissed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner not met that burden.

ORDER: The appeal is dismissed.