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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



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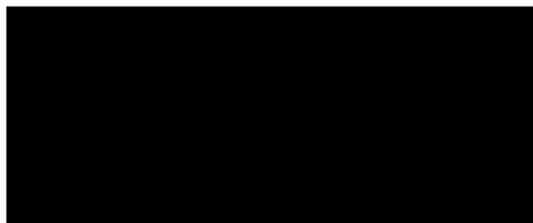
DATE: Office: CALIFORNIA SERVICE CENTER
AUG 10 2012

FILE:

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 \$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

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed an appeal. The matter is now before the AAO on motion. The AAO will dismiss the motion.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the beneficiary's P-1S classification as essential support personnel pursuant to section 101(a)(15)(P)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(b). The petitioner is for-profit enterprise located in Woodland, California, engaged in event promotion and producing a promotional clothing line with 3 employees and a gross annual income of \$110,000. It seeks to continue to employ the beneficiary as a professional boxing manager for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary's services are an integral and essential part of the performance of the petitioner's P-1 boxing career, or that the beneficiary's services cannot be readily performed by a U.S. worker. The director further noted that the Form I-129 Petition for Nonimmigrant Worker explicitly indicates that the beneficiary will be acting as a professional boxing manager. However, in response to a Request for Evidence (RFE) issued by United States Citizenship and Immigration Services (USCIS), the petitioner indicates that the beneficiary is not actually the manager but rather a trainer. The director noted that this constitutes a material change to the position in which the present petition was filed for and therefore, the petition is not approvable.

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 director's decision is "... premised on an incorrect legal standard ..." and that "... CIS fails to cite specific, substantive evidence to rebut the presumption that the beneficiary is indeed essential support to the P1 boxer ..." Counsel further asserts that the director incorrectly concluded that the beneficiary must be "the one and only trainer of the P1 boxer." Counsel further asserts that the evidence submitted is sufficient to meet the requirements of section 101(a)(15)(P)(i)(b) of the Act. Counsel submits a brief and additional evidence in support of the appeal, however, counsel does not address the director's conclusion that the initial filing indicates that the beneficiary will serve as the professional boxing manager of the P-1 boxer, not his trainer.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary qualifies as essential support personnel for the P-1 athlete, as the evidence of record does not establish that he performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the athlete. Specifically, the record is inconsistent with respect to the role that the beneficiary will serve, and does not contain sufficient evidence that the beneficiary will serve the P-1 in the role indicated. Accordingly, the director's decision to revoke the approval of the petition will be affirmed and the appeal will be dismissed.

I. The Law

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

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are

essential to the successful performance of services by the P-1, P-2, [or P-3] alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that the beneficiary is qualified to perform the services and the services cannot be readily performed by a United States worker.

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

- (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
- (B) Evidentiary criteria for a P-1 essential support petition. A petition for P-1 essential support personnel must be accompanied by:
 - (1) A consultation for a labor organization with expertise in the area of the alien's skill;
 - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
 - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The regulation at 8 C.F.R. § 214.2(p)(10)(iii)(A) states that the Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The statement of facts contained in the petition were not true and correct;
- (3) The petitioner violated the terms or conditions of the approved petition;
- (4) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or
- (5) The approval of the petition violated paragraph (p) of this section or involved gross error.

II. Discussion

The primary issues to be addressed in this proceeding are: (1) whether the petitioner established that the beneficiary will be performing services that cannot be performed by a United States worker and that are essential

to the successful performance of services by the principal P-1 athlete; and (2) whether the beneficiary has the requisite prior relationship providing such services to the principal athlete.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 3, 2010. The petitioner indicated that it has retained the services of [REDACTED] to exclusively manage fighters under the [REDACTED] banner. The petitioner indicates that it has retained [REDACTED] to sign an exclusive multi-year managerial contract with three fighters who are being sponsored by [REDACTED]. The AAO notes that the P-1 boxer whom the beneficiary is supposed to essentially support is not one of the three indicated. The petitioner goes on to describe how [REDACTED] proceeded to sign three additional fighters and how the beneficiary "... acts as an exclusive consultant to promoters for fighters [REDACTED] and [REDACTED]." [REDACTED] is the P-1 boxer who is the subject of the P-1 support petition. Specifically, the petitioner stated:

[REDACTED] and all the fighters (enclosed) are bound by exclusive managerial agreements which are also recognized and documented with the New Jersey State Athletic Commission, the Illinois State Commission and the Texas Combative Sports Commission. [The beneficiary] holds the worldwide rights to all of the fighter's career activities for the next five years and has an automatic extension of the agreement if the fighter becomes a world champion. This agreement requires [the beneficiary] to provide representation to the fighters in all aspects of their boxing career, including negotiating fights, purses and incidental expenses. As a manager and trainer, [the beneficiary] is also required to make all travel, lodging, training and medical treatment arrangements. In addition, along with his business partner, Georgia Iacovou, serves as the fighter's liaison with the American Athletic Commissions, boxing managers and boxing promoters worldwide. In short, [the beneficiary] takes care of all aspects of the fighter's life and has been doing so for the past four years, this is done so that the boxer may concentrate solely on training and boxing.

The director issued a request for additional evidence on June 28, 2010, in which he noted that the current contract between [REDACTED] and the P-1 boxer, [REDACTED] lists another individual as the P-1 boxer's manager. Therefore, the director noted that it does not appear that the beneficiary is currently employed in the essential support position of the P-1 boxer's manager. The petitioner was asked to provide documentary evidence to explain this discrepancy. The director also noted that the beneficiary is the founder of [REDACTED] which provides services to multiple boxers. The [REDACTED] instructed the petitioner to provide evidence that the beneficiary provides services that are essential to the successful performance of services of the principal P-1 athlete, and which cannot be readily performed by a U.S. worker.

In response to the request for evidence, counsel for the petitioner states:

[The beneficiary] and his long-term partner, [REDACTED] run their successful management company [REDACTED] together and have done so for the past nine years. [The beneficiary's] position is "consultant" and "head trainer." [The beneficiary] has been [REDACTED] head trainer the entire time arranging and working with numerous individuals to make up the training team.

Counsel goes on to indicate that the beneficiary and his partner provide management services to other fighters and that they are sought after managers within the boxing industry.

On appeal, the petitioner submits a letter indicating that he submitted a letter to USCIS on July 19, 2010 indicating that the beneficiary was the P-1 boxer's "Head Trainer" not his manager, and that another individual, [REDACTED] was the P-1 boxer's was helping in management efforts by acting as a liaison with the Green community to sell tickets and merchandise for the P-1 boxer's fights. Counsel goes on to state that:

On November 19, 2010, the petitioner filed a motion to reopen, explaining that the beneficiary was not the P-1 boxer's manager, but rather his trainer and both [REDACTED] and [REDACTED] served as the P-1 boxer's manager. The petitioner also provided additional evidence verifying that the beneficiary was the P-1 boxer's trainer, including a letter from the P-1 boxer himself.

Counsel asserts that CIS erred in denying the petition noting that the standard imposed by the director required the beneficiary to be the "one and only" trainer of the P-1 boxer. Counsel goes on to state that the beneficiary is in fact the P-1 boxer's one and only trainer, and that the regulations do not require the beneficiary to demonstrate that he is the only and only support to the principal P-1, rather he/she must demonstrate essentiality. Also submitted on appeal is a letter from the P-1 boxer who indicates that "... [the beneficiary] is my one and only trainer ... [REDACTED] is my primary manager." The AAO notes that this statement is inconsistent with the current contract between [REDACTED] and the P-1 boxer, which lists [REDACTED] as the P-1 boxer's manager.

As noted by the director, the instant petition was filed for the essential support position of "professional boxing manager." The petitioner then states throughout the record and on appeal, that the beneficiary is not a manager but rather a trainer. This constitutes a material change to the position for which the present petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner failed to meet all eligibility requirements for the requested classification. As discussed above, the record contains materially inconsistent statements regarding the beneficiary's essential services. Based on the lack of required evidence of eligibility in the current record, the AAO affirms the director's decision.

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 has not met that burden.

ORDER: The appeal is dismissed.